

6-25-2008  
MHW

08cv3848

JUDGE HOLDERMAN

MAG. JUDGE ASHMAN

Attention

To: The Clerk of  
The State of New Mexico  
Penitentiary, N.M.,

only gave Mr. Rivera

\$300.00 in copies due

to their Law, and I do

not have money to pay for them I do not  
only #9 - copies

FILED

7-7-2008  
JUL 7 2008

IN EXHIBITS /

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

May I Please

Have A copy  
Marked

Filed,

MR. M. Rivera

MR. M. Rivera

64650

Thank you!

☐ CNMCF/CMRU/CMU  
PO Drawer 1328  
Los Lunas, NM 87031

☐ GCCF  
P.O. Box 520  
Santa Rosa, NM 88435

☐ LCCF  
6900 W. Millen Dr.  
Hobbs, NM 88244

☐ PNM  
PO Box 1059  
Santa Fe, NM 87504

☐ SNMCF  
PO Box 639  
Las Cruces, NM 88004

☐ SNMCF-POU  
PO Box 20005  
Las Cruces, NM 88004

☐ WNMCF  
PO Drawer 250  
Grants, NM 87020

Name \_\_\_\_\_

No. \_\_\_\_\_ Unit \_\_\_\_\_

Date: \_\_\_\_\_

☐ CNMCF/CMRU/CMU  
PO Drawer 1328  
Los Lunas, NM 87031

☐ RCC  
578 Chickasaw Rd  
Hagerman, NM 88232

☒ PNM  
PO Box 1059  
Santa Fe, NM 87504

☐ SNMCF  
PO Box 639  
Las Cruces, NM 88004

☐ SNMCF-POU  
PO Box 20005  
Las Cruces, NM 88004

☐ WNMCF  
PO Drawer 250  
Grants, NM 87020

## INMATE PURCHASE ORDER

To: Inmate Accts  
Number \_\_\_\_\_  
and Street: \_\_\_\_\_

Date: 6/27/08  
Name: Miguel Rivera Number 64650  
3 B W 12

City: \_\_\_\_\_

State: \_\_\_\_\_

Please complete the following order. Do not substitute for the merchandise requested. Check for full amount enclosed. Do NOT send merchandise on a Penitentiary account or C.O.D.. No transaction on a charge basis will be accepted.

Catalog Number	Quantity	Description of Article or Service	Size	Cost
		Legal Copies	1506	.20 per page
		Debt to Account per policy legal copies		
		(Cannot Generate any more copies due to policy till debt is paid.)		
M.R.		Meaning the court have to give court order for legal copies		

Amount of Order: \$ 300.00  
Postage: \$ \_\_\_\_\_  
Total: \$ 300.00

Authorization is granted to debit my account and issue a check in the total shown for purchase of merchandise of services as indicated.

APPROVED Martha Zubizar  
Signature of Authorized Officer

M. Rivera No: 64650  
Signature of Inmate

Check No.: \_\_\_\_\_

- A...#1 REQUEST FOR INVESTIGATION OF A JUDGE OR ASSOCIATE JUDGE.  
STATE OF ILLINOIS JUDICIAL INQUIRY BOARD. AND THE  
REPOSET FROM INVESTIGATION,
- B...#2 one, Letter from Attorney-Richard A. Duffin,  
ATTY. OF Sachnoff & Weaver, Ltd. AT LAW.
- C...#3 Letters from Don carson, FATHER OF Heather, C,  
2,
- D...#5 Letter, to Heather carson, from Miguel Rivera,  
AND Heather carson, RETURNING Letter BACK TO  
MIGUEL R, 1 of 4,
- E...#4 DEPARTMENT OF CORRECTIONS MEDICAL RECORDS  
FROM Chicago, IL.
- F... The order of Judge Ms. Laws, DISMISSING M. Rivera,  
Post CONVICTION, WITH OUT INVESTIGATION THE F.B.I,  
and Jury people,



G. #7 STATES MOTION TO DISMISS, and order.

H. #8 COURT REPORT OF PROCEEDING. and Letter OF how Jury Trouble, C. 45.

I. #9 Letter, from. SOCIAL SECURITY OF M, Rivera

J. #10, J... CERTIFIED STATEMENT OF CONVICTION DISPOSITION. where HOME INVASION/ARMED NOT ATT-MURDER with in INTENT TO KILL. was not in the Jury Findings, meaning wrongful charges and CONVICTIONS,

K. #11, K... MOTION TO PRODUCE THE STATE'S TRIAL FILE FOR REVIEW BY PETITIONERS

L. #12, L... COUNSEL, #8-PGS,

AFFIDAVITS FROM MIGUEL RIVERA, #6-PGS,

M. #13, M... MOTION REQUESTING RELEASE OF SUBPOENAED MATERIALS,

N. #14, N... CERTIFICATE OF POST-CONVICTION COUNSEL

MOTION TO ISSUE SUBPOENAS. #5-PGS,

O. #15, O...

P...#16 MOTION TO ~~ISSUE~~ SUBPOENAS.

Q...#17 student performance by Test Item.  
New, School ~~Record~~ Records

R...#18 ~~Motion to produce the state's TRIAL File~~  
~~for REVIEW BY, was denied by Judge~~  
~~Ms. M. C. Law~~

S...#19 Police Dept of City of Chicago, Records  
Need, But court and counsel denied.  
~~them to M. Rivera, and Post-conviction~~

T...#20 ~~ONE Letter from Chief, Appeals Division.~~

Miguel Rivera #64650.

U...#21 ~~Motion for Leave Mandamus~~

V...#22 Letter for investigation. From Atty-P.D.O.  
she never did

W...#23 Letter from Atty P.D.O.

X...#24 Letter seeking help for Attorney's

Y...#25 AFFIDAVIT and Letter I Worked.

Z...#26 BRIEF-Motion from P.D. Todd A. Shanker,

~~EXHIBIT #25, PUBLIC DEFENDER,~~

~~EXHIBIT #26, Letter from James P. Lawless  
A/s. Administrator of  
Court Reporters~~

~~EXHIBIT #27, Letter from, center on  
WRONGFUL CONVICTION. PLAINTIFF seeking  
help, FOR INVESTIGATION~~

~~EXHIBIT #28, Letter of STATE of Illinois  
on Defect Robert CLEMENS,~~

~~EXHIBIT #29, Motion for NEW TRIAL in 2001~~

~~EXHIBIT #30, order and Motion for Relief~~

~~EXHIBIT #31, from the <sup>APPELLATE</sup> SUPREME COURT, and  
of Illinois and Motion  
SUPREME COURT~~

~~EXHIBIT #32, MOTION~~

~~EXHIBIT #35, Trial Transcripts some missing,  
was given to PLAINTIFF this way. IN 2001.~~

~~EXHIBIT #33, A Letter from the PUBLIC DEFENDERS OFFICES  
After #17 to 18-months Later. I Received ON MAY 14, 2008, From  
Ms. Lynn F. Wilson, She's is Lying ALL Three P.D. did  
know I was in New Mexico.~~

EXHIB # 1

OF STATE OF ILLINOIS  
JUDICIAL INQUIRY  
BOARD AND

Letter To Head Man  
OF The Public  
de Feder's offices

EXHIBIT ~~#1~~ /

~~Motion for New Trial~~  
~~in 2007~~

34366971102000000000

\*(TY2000)

PAGE 0001 OF 0004

DOCUMENT TYPE: W-2  
PAYEE ENTITY DATA: 343-66-9711  
MIGUEL RIVERA  
5704 W. 35TH STREET  
CICERO  
STATE: IL ZIP: 60804-0000

ACCOUNT NUMBER: N/A  
PAYER ENTITY DATA: 382293997  
CITY TRANSFER COMPANY INC.  
39555 SCHOOLCRAFT  
PLYMOUTH MI 48170

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS  
WAGES.....\$540+  
TX WITHELD.....\$65+  
FICA TX WH.....\$33+  
T FICA WAG.....\$540+  
MEDCARE WH.....\$7+  
MEDCARE WG.....\$540+

\*\*\*\*\*

TAXPAYER COPY

\*\*\*\*\*

*Mailed Apr 21, 2003*

34366971102000000000

\*(TY2000)

PAGE 0003 OF 0004

DOCUMENT TYPE: W-2

PAYEE ENTITY DATA: 343-66-9711

MIGUEL RIVERA

602 SE 13TH ST

CAPE CORAL

STATE: FL ZIP: 33990-0000

ACCOUNT NUMBER: N/A

PAYER ENTITY DATA: 651000755

HAWORTH CONSTRUCTION INC

8056 PELICAN ROAD 8056 PELICAN ROAD

FORT MYERS

FL 33912

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS

WAGES.....\$2,295+

TX WITHELD.....\$154+

FICA TX WH.....\$142+

T FICA WAG.....\$2,295+

MEDCARE WH.....\$33+

MEDCARE WG.....\$2,295+

\*\*\*\*\*

TAXPAYER COPY

\*\*\*\*\*

*#9.00 Hr.*

34366971102000000000

\*(TY2000)

PAGE 0002 OF 0004

DOCUMENT TYPE: W-2  
PAYEE ENTITY DATA: 343-66-9711  
MIGUEL RIVERA  
602 S.E. 13TH ST.  
CAPE CORAL  
STATE: FL ZIP: 33990-0000

ACCOUNT NUMBER: N/A  
PAYER ENTITY DATA: 592726145  
DYNASTAFF CORP. D B A ONESTAFF  
E 200 25 2ND STREET N SU  
ST PETERSBURG FL 33701

*\$9.00 Hr.*

PENSION INDICATOR: UNANSWERED

STATUTORY EMPLOYEE IND: NO

TYPE OF EMPLOYMENT: ALL OTHERS  
WAGES.....\$660+  
TX WITHELD.....\$83+  
FICA TX WH.....\$40+  
T FICA WAG.....\$660+  
MEDCARE WH.....\$9+  
MEDCARE WG.....\$660+

\*\*\*\*\*

TAXPAYER COPY

\*\*\*\*\*



828 Paplar Lane  
Bolingbrook IL  
60440

Q 51 BH 105

Miguel Rivera #64650  
La County Correctional Facility  
6900 W. Miller Drive,  
Hobbs New Mexico  
88244

BEDFORD PARK IL 6014  
06 APR 2007 PM 2 T

00200/3333



Lindsay Parkhurst, Esq.  
Vice Chair  
John E. Kreisler  
Jill W. Landsberg, Esq.  
Raymond J. McGury  
Hon. John O. Steele  
Hon. Donald C. Hudson  
Tom Leahy, Esq.

Kathy D. Twine, Esq.  
Executive Director  
General Counsel  
100 West Randolph Street  
Suite 14-500  
Chicago, Illinois 60601-3233  
312/814-5554  
800/227-9429  
TDD 312/814-1881  
FAX 312/814-5719

STATE OF ILLINOIS  
JUDICIAL INQUIRY BOARD

**REQUEST FOR INVESTIGATION**  
**OF A JUDGE OR ASSOCIATE JUDGE**

Your Name: MIGUEL RIVERA  
(Please print in ink or type)

Address: CNMCF/CHRY/APA-UNIT-1-B-F-100.-P.O. Drawer 1328

City, State, and Zip: LOS LUNAS, NEW MEXICO - 87031

Telephone: Daytime: ( ) NONE

Evening: ( ) NONE

I have information of possible willful misconduct in office, persistent failure to perform his or her duties, or other conduct that is prejudicial to the administration of justice or that brings the judicial office into disrepute on the part of Marjorie C. Laws of (First & Last Name of Judge)

the Court in Cook County, Illinois, or to charge that Judge or (City) (County) and Judge: Edward Fiala, AT TRIAL!  
Associate Judge is physically or mentally unable to perform his or her duties.

**STATEMENT OF FACT**

1. When and where did this happen?

Date(s): Sept 21, 2004, and The year Time: ON OR ABOUT 9:30 AM  
of 2005 and 2006

Location: COOK COUNTY COURT House - AT 26505 - CALIFORNIA Ave.  
Room 301 - Chicago, IL 60608.

2. If your information arises out of a court case, please answer these questions:

(a) What is the name and number of the case?

Case Name: The People of the State of Illinois - vs - Miguel Rivera

Case Number: 01-CR-2646 - ON Appellate - No. 1-06-2788

(b) What kind of case is it? (Please check one below)

☒ Criminal

☐ Probate

☐ Domestic

☐ Law

☐ Juvenile

☐ Municipal

☐ Small Claims

☐ Traffic

☐ Other (specify) \_\_\_\_\_

(c) What is your relationship to the case?

☐ Plaintiff/Petitioner

☒ Defendant/Respondent

☐ Attorney for:

P.D. Andrea Monsces

☐ Witness for:

☒ Other (specify): Jures, Ms. Sharon Lunn, and  
Ms. Jennifer Schumal,

(d) If you were represented by an attorney in this matter at the time of the conduct of the Judge, please identify your attorney:

Name: Andrea Monsees, A/P.D.  
 Address: 69 W. WASHINGTON 15TH Flr. Chicago, IL 60602  
 Telephone Number: (312) 603-0600

(e) Identify any other attorney(s) who represented you or any person involved in the case:

Name of attorney: FRANK D. EDWARDS  
 Address of attorney: 4637 So. Lake Park Chicago, IL 60653  
 Telephone Number: (773) 624-0771 - 24-Hours.  
 Attorney represented: Miguel Rivera

3. List documents that help support your allegation that the Judge has engaged in

misconduct or has a disability, noting which ones you have attached (SEE BELOW):

Jury Trial, Reports of Proceedings, Letters from Mr D. Carson  
Heather Carson - Father, Documents from Dept of Police,  
Letter from Atty Richard A. Duffin, The State's Motion To Dismiss,  
P-D's Motions, and The P-D Atty's Refusing To do A investigation,  
and Post Conviction,

4. Identify, if you can, any other witnesses to the conduct of the Judge:

Name: Jury witnesses, - Ms. Sharon Lunn, Ms. Jennifer Schumal,  
 Address: The Attorneys in case. Refuse To give me their  
 Telephone Number: ( ) N/A

NOTE: You must designate specifically the particular words, diagrams or pictures contained in any documentation submitted which substantiates your allegations. Documentation without the required designation will not be considered.

Documents must be retained in our files. Please send copies only.

5. Specify below the details of what the Judge did that you think constitutes misconduct or indicates disability: (Please type or print legibly - attach additional paper if necessary).

Judge: Edward Fiala, Helped The STATES Attorneys Put Together A Wrongful-conviction and wrongful-sentencing case along with My Attorney Frank D. Edwards, and now ON A Appeal. Judge: Ms. M. C. Law, Refuse To investigate The case of kidnapping. THAT never was committed. even The States Attorneys office in foruth Myer Myers, FL. do know, My x-girl friend. Told The state and 5-Polices she and her kids were not kidnapped, BUT Judge Ms. M. C. Law's Refuse do have investigators To check into case and To check with The F.B.I, and The Arresting Det's Chicago Police - Reports from FL. and Chicago... OR To interview My witness My Past Conviction, shouldn't have been dismissed on Sept 14, 2006. if you please do a Re-view and see all The legal documents I'm sending, you will see. That every Public defender and State Judge is Throwing This case For The STATE Attys on a wrongful conviction - and sentencing, and inforcing a double Jeopardy case, Really investigating This wrongful conviction and sentencing, They all Refuse To Answer My Letters, This hold case Really need to be investigated.

Your Signature: Miguel Rivera #64650.

Date: July 9, 2007.

Please Help Me save My life. and I want To Come Back home, To be Place in the Illinois River C.C. witness P. protection unit fore My safety, and given a new Trial OR Let out of Jail,

M.R.

May 30, 2007.

State of Illinois

Judicial Inquiry Board

to: Kathy D. Taurine, Esq.

Executive Director and

General Counsel.

100 West Randolph Street

Suite 14-500

Chicago, IL 60601-3233

No. 01CR2646

Dear Kathy D. Taurine,

My name is Miguel Rivera # 64650 I am at  
The CMACE/CMRU/UNIT # M.H.T.C.-A-209.

P.O. Drawer 1328

Los Lunas, NM 87031.

I am writing to you this Emergency letter  
because I need your help in filing a  
complaint on State court Judge and State  
Attorney's and the chief of the Public defenders  
office, and P.D. Attorney Mr. Andrew Moncees, for  
failing to an bribe investigation  
and Jury witness's and the common law  
Records, including all Police Reports  
Statements and general Progress Reports  
and Summoning Reports, filed under RD No.  
F-529122. and investigating the fort

Weyers, Florida Sheriff police Dept. of the Lee county and as of the State Attorney office in arresting warrant on said agg-Battery being to an Expedition on January 9<sup>th</sup> 2006 Back to Chicago, Illinois By Det's Robert Candler, Mr. Karen Skipper, and in to a wrongful conviction and sentencing By said Judge: Edward M. Giala, and State Attorneys, Arunas Buortomas, Dan Tiernan, and P. D. Attorney Monica Johnson, and Attorney Frank Edwards, on said Trial December 13<sup>th</sup> 2001...

on September 14, 2006 My post-conviction petition was dismissed due to Judge Mr. M. C. Laurs, and they are withholding evidence and refuse to investigate. The wrongful conviction and sentencing and arrest there was no evidence nor warrant for agg-kidnaping, the State Attorneys and sheriff police and court of the fort Meyers Florida states said kidnaping was not committed, I truly do believe said parties are in this throwing case to Judge Giala and Judge Mr. C. Laurs, on a double Jeopardy and wrongful conviction and sentencing meaning case was set up Jury ladies Ms. Sharon Lunn, Jennifer Schumal,



will witness to you about the trial was  
set up and state witness stated they were  
not kidnaped, said court Judge Attorney - P.D.  
and state Attorney. & Refuse to do the  
investigation because of Judge E. Jiala  
and state Attorney and Attorney F. Edarub,  
the post-conviction never should  
have been dismissed new trial should  
have been granted or fitness hearing  
and lesser included offenses,  
please help me kidnapping is class XF.  
6 to 12 and 6 to 30 yrs and w/ extended term  
is 30 to 60 yrs sentence and agg-unlawful  
restraint carries a maximum extended  
term of 70 years ~~more~~ imprisonment,  
I am in need please do a investigation  
and could you please call the CUMM/F/C.C.F.  
to the warden to set up a telephone call  
to talk to me please I have a 4th grade  
ed. ~~to~~ and may I please send you the  
legal documents I have a copy the  
Judge laws and the public defenders  
office Refuse to give me the discovery  
and all Police Reports, please help  
me save my life Please as long  
as the courts keep on giving me a  
P.D. to fight my case and I can't  
prove my innocence,



could you please get back to me as  
soon as possible please let me  
know you received this emergency  
letter please, I thank you, for your  
time, help, understanding,

~~Sincerely,~~

Miguel Rivera #64650

CNMCF/OMRC/unit #M.H.I.-C-A-209.

P.O. Drawer 1228

Los Lunas, NM 87031

C.C.

M.R.

May 30, 2007.

(1 of 4)

To; the Head prison of  
the Public defender's office.

May 30<sup>th</sup>. 2008.

To; Mr. Lester Sinkley,  
69 W. Washington St. 15<sup>th</sup> fl.  
Chicago, Illinois 60602.

\*-Emergency-\*  
\* Attention Please -\*

Dear Sir,

My name is Mr. Miguel Rivera #64650  
I am at the CNMCF/APA-IB-E-111, P.O.  
Drawer #1328. Los Lunas, NM 87031.

Case No: 06-2788.

I am writing to you A Emergency  
letter because all the Public -  
defender's that have been appointed  
to my case played the ineffective A/S.  
of Counsel Act. and Refuse to listen  
to me and Refused to do An investigation  
my case from Atty: Frank Edwards, to  
P.D. Atty: Monica Johnson, that set the  
wrongful conviction and wrongful  
sentencing up along with the State Atty's  
Bautistas, and Tiernan, at Trial in  
Case No: 01: Cr: 2646. even to P.D's that  
were appointed to my case.

(2)

and in my past conviction. Atty. Andrea Monsees, and now after \*17 to 18 months later another P.D. comes in my appeal a Lynn Wilson files a motion to withdraw from appeal, due to all the Public defenders before her were ineffective A/s of Counsel. fore mixing up my case and they all Refused to investigate the case and jury people and Doctor on my behalf, and they Refused to give me a copies of the discovery and all police reports even when I have legal documents stating the P.D. office is to give you a copy, they Refused to even ask Judge: Mr. M. Law, for me or due investigate the F.B.I. and now at this point and time, the Public defender (number 312-603-0600) have been a block so that I can't call my P.D. This happen because of Andrea Monsees for \*18 months now, and Sir when the Public defenders office is appointed to any case no matter what they are to help the defendont or the petitioner, the only one that truthfully have helped me for the passed (4) years is Harold J. Winston.

But now he tells me not to call his number because Lynn Wilson Refuse to come to his office to take my calls Sir right now I am having Real Serious medical problems I can died from. and it looks like Ms. Lynn Wilson don't care, from what have happen about my case.

(3)  
She was to call to new mexico to set up a day and time to talk to me this week here. and was to call the interstate compact Transfer coordinator's office to sandy furt, to tell them the serious trouble I am having here. for a year now... I had to explain to Harold Winston, that I have to come back to Chicago. one for medical surgery, and on a hardship Transfer. so I can have visitations. rights with my sons, and that I have to be placed in the Illinois River. conv. etc. witness protection unit for my safety? I have sent 10 letters to them but they will not answer me back, and the P.D. office Refuse d to help me get a court order so that I can be sent to an outside hospital. Mr. Winston says no judge will give the court order, Sir. please I need your help in this matter of an Emergency! and my I please have a copy of the discovery and all police Reports from fl. to Chicago, Sir. their is more to tell you but I have to say it By T-phone I don't know how to explain it on paper... it's serious, can you please send me a T-phone number I can call you. because like I said the 603-0600 Refuse to take my collect calls,

4  
 Sir, this is an Emergency, please do  
 let me know you? have Received this  
 letter please Mr. Sinkle, because  
 P.D. Nty: Lynn states she ~~was~~ never got  
 my letter. I'm sorry to say how can  
 you get the one with the blood in  
 it not the other. I can't believe her,  
 I am sitting to hear ~~back~~ Back from  
 you as soon as you receive this letter  
 I thank you, for your, help, time, and  
 understanding,

C.C.  
 M.R.  
 5-29-08

Sincerely

Miguel Rivera #64650  
 CNA/CF/TPA-1B-E-1.16, P.O. Drawer #1328,  
 Las Lunas, NM 87031,



Jill W. Landsberg, Esq.  
*Chairman*  
Lindsay Parkhurst, Esq.  
*Vice Chairman*  
John E. Kreisler  
Raymond J. McGury  
Hon. John O. Steele  
Hon. Donald C. Hudson  
Tom Leahy, Esq.

Kathy D. Twine, Esq.  
*Executive Director*  
*General Counsel*  
100 West Randolph Street  
Suite 14-500  
Chicago, Illinois 60601-3233  
312/814-5554  
800/227-9429  
TDD 312/814-1881  
FAX 312/814-5719

STATE OF ILLINOIS  
JUDICIAL INQUIRY BOARD

July 20, 2007

Miguel Rivera  
CNMCF/CMRU/ADA-Unit-1-B-F-102  
P.O. Drawer 1328  
Los Lunas, NM 87031

Dear Mr. Rivera:

The Judicial Inquiry Board ("Board") received your request for an investigation of an Illinois state court judge. The Board will discuss your request to determine whether it has jurisdiction and if so, whether an investigation or other Board action is warranted. Kindly be advised that the Board's action does not include legal assistance or intervening in any court case. Therefore, if you have an active court case, you must continue to proceed with whatever remedies that may be available to you within the court system.

It is important for you to note that pursuant to the Illinois Constitution and the Board's Rules of Procedure, the Board is prohibited from sharing with you or anyone outside of our agency the details of any investigation or action taken in lieu of or prior to filing a complaint with the Illinois Courts Commission ("the Commission"). Only those documents filed with the Commission during the prosecution of a matter becomes public record. However, after the Board has made its final determination and taken all warranted action, you will receive written notification of its determination.

Also be advised that the Board does not have jurisdiction to investigate allegations of misconduct against attorneys, court personnel, police officers, or anyone other than active judges of the State of Illinois.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy D. Twine".

Kathy D. Twine  
Executive Director &  
General Counsel

KDT: mp



Attorney Jill W. Landsberg  
*Chair*  
Honorable John O. Steele  
*Vice Chair*  
Honorable Donald C. Hudson  
John E. Kreisler  
Attorney Tom Leahy  
Raymond J. McGury



STATE OF ILLINOIS  
JUDICIAL INQUIRY BOARD

Attorney Kathy D. Twine  
*Executive Director*  
*General Counsel*  
100 West Randolph Street  
Suite 14-500  
Chicago, Illinois 60601-3233  
312/814-5554  
800/227-9429  
TDD 312/814-1881  
FAX 312/814-5719

January 14, 2008

Mr. Miguel Rivera  
CNMCF/CMRU/ADA-Unit-1-B-F-102  
P.O. Box Drawer 1328  
Los Lunas, NM 87031

Dear Mr. Rivera:

The Judicial Inquiry Board ("Board") has concluded its review of the allegations raised in your request for an investigation and has determined to close the matter. The Board's determination to close the matter is in no way an opinion as to the merits of your court case.

Please note that the Board is prohibited, pursuant to the confidentiality provisions contained in its Constitutional authority and Rules of Procedure, from disclosing specifics regarding its decision, findings or information about its deliberations of any matter.

Thank you for bringing your concerns to the Board's attention.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy D. Twine", followed by a horizontal line.

Kathy D. Twine  
Executive Director &  
General Counsel

KDT: mp

B. EXHIBIT-#2



**Sachnoff & Weaver, Ltd.**

Attorneys at Law

30 South Wacker Drive • 29th Floor • Chicago, Illinois 60606-7484

Telephone (312) 207-1000

Richard A. Duffin  
(312) 207-6474  
rduffin@sachnoff.com

Facsimile (312) 207-6400

www.sachnoff.com

June 9, 2003

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Miguel Rivera  
Inmate No. N-23881  
Pontiac Correctional Center  
P.O. Box 99  
Pontiac, IL 61764

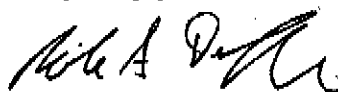
Dear Mr. Rivera:

I am in receipt of your correspondence dated May 30, 2003. As you are aware, I am not your attorney. As you also know, I did speak to your ex-wife in connection with my decision of whether to accept your case. Prior to your trial in the Cook County Circuit Court, I informed you that while I could not act as your attorney, I would be happy to speak to whomever you eventually decided to hire as your attorney. I did eventually speak with your trial attorney prior to the beginning of your trial.

I cannot act as your attorney in connection with your appeal or in connection with any post-conviction proceeding that you are involved in now or will be involved in at a later date. With that said, if you eventually do hire an attorney in connection with your case, I would be happy to speak with that person and provide whatever information that I can.

I sincerely hope that everything works out for you as well as possible under the circumstances. Best regards.

Very truly yours,



Richard A. Duffin

RAD/scp

Document No. 583915

EXHIBIT - C - ~~2~~ 3.

5/31/03

Dear Miguel:

I am very sorry to hear about your mom. God rest her soul.

I do not want any trouble on our side. How ever I have not seen Heather or talked to her since the trial. I as you, miss my grand kids. I feel for you but there is nothing I can do. I am out of her life I guess.

I dont know what happened that day except what you told me. But I know there was a lot of <sup>un-needed</sup> ~~needed~~ violence when you left for Florida. Slabbing ect.

Your letter was forwarded to us, we have moved and dont give out our address ect.

God Bless you Sorry  
Don & Rose Carson

April 6 2007

Dear Miguel,

I am sorry to say that I have not heard from Heather in a few years. Since she left for Wisconsin. As far as I know Mike has the 2 boys in Chicago some place. She is with some other person. That's all I know.

As far as Heather's records - We do have all of them. She spent her years from 13 in group home's. She is by Paller and was suicidal. We did the Right thing by her as a child. ~~to~~ She was in psychiatric care all her life. (Most likely lied to you, as she lied to everyone). Part of the sickness we can prove everything, no don't threaten us, you don't know the story. I have taken this as a threat. What does it tell you that your own sister won't help you. So don't look like a fool.

There is nothing we can do for anyone. Poor health and moving away. We almost did not get letter because we are in the process of a move.

Glad you found the truth, but what you did, you did what was said in Court was the truth about you.

at one time we tried helping you and everything we gave you and Heather you threw out.

Any more letters, calls we will ~~can~~ look at it as harassment along with the letter you wrote. We are keeping of proof -

Don & Rosemary Benson

EXHIBIT - E<sup>#</sup>4,

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff-Respondent,	)	
	)	No. 01 CR 2646
vs.	)	
	)	Hon. Edward Flala,
Miguel Rivera,	)	Judge Presiding at trial
Defendant-Petitioner.	)	Hon. Marjorie Laws
	)	Presiding on collateral review

---

EXHIBIT 4 a-g

EXCERPTS FROM ILLINOIS DEPARTMENT OF CORRECTIONS  
RECORDS

MEDICAL SUMMARY

Resident's Name: Rivera Miguel Resident's Number: N23881

Age: 41 Birthdate: 10-28-64 Sex: M Race: Hisp

Date Hospitalized: 6/28/05 Date Discharged: 7-1-05

Active Problems/Diagnosis:

Generalized Anxiety Disorder

Subjective/Objective (Brief History):

Operations

USE Abt. noted x3  
TC suspicious TP organized  
SI/HIE A4/V4E

Laboratory and X-ray Data:

Complications:

Assessment and Prognosis:

poor problem solving and coping skills worsened  
by anxiety disorder

Plan:

Medications:

Prozac 20mg hs  
Trazodone 100mg hs

Treatment:

Follow-Up:

Psychiatry and psychology to follow

RESULT: ( ) Recovered ( ☒ ) Improved ( ) Not Improved ( ) Not Treated

7-1-05

Date

RBW

MD

Paula D. J. G. J.

DC7104-14  
9-78

4/A+B  
2

JK  
8/29/05



**Stateville Correctional Center**

Rivera

Miguel  
First Name

ID#: NZ3881

Date/Time	Subjective, Objective, Assessment	Plans
	PSYCHOLOGY NOTE	
6/28/05 11:30 A	<p>S: inmate Rivera was seen in the infirmary. He related that he cut his arm at his cell house because the staff refused to call a crisis member when he became distressed about transfer to Bopac II. Inmate states that he became angry when laughed at and told "You're not going to do anything to yourself." Inmate states that he "can't take it," is fearful and anxious. Agrees to infirmary watch and further psychiatric evaluation.</p> <p>O: Hypervent, oriented x 3. Good eye contact. Thoughts are organized. Mood is anxious; affect is congruent.</p>	<p>P: Initiate 10' watch</p> <p>May have paper goods</p> <p>No sharps, knives</p> <p>Refer to Psychiatry for medication adjustment.</p> <p>Chad Helwig, PsyD</p> <p>Psych Admin of HHS</p>

## ILLINOIS DEPARTMENT OF CORRECTIONS

## Offender Infirmity Progress Notes

## Stateville Correctional Center

## Offender Information:

Rivera

Miguel

ID#: N23881

Last Name

First Name

MI

Date/Time	Subjective, Objective, Assessment	Plans
6/28/5	Rn hote	
1100	Placed in cell 136 on 10' watch — psych to eval. Offender quiet @ this time Verceptomade on suicidal ideation	Psych to eval P. Reese
4/29/5	Rn notes	
1100	S. Jones O. alternate offered & complaints & attempt at self harm. Easily Awakened for breakfast A.M.H.	P. 11 cont 10 min watch J. Sigall

## ILLINOIS DEPARTMENT OF CORRECTIONS

## Offender Infirmity Progress Notes

**Stateville Correctional Center**

**Offender Information:**

Rivera

ID#: N23881

Date/Time	Subjective	Objective	Assessment	Plans
12/5/94	<p>RN Note</p> <p>S: "I want to see J.A. &amp; the warden." Com true</p> <p>O: A/CX3. Demanding to see J.A. Information was passed on to Security. Took med. O Autha</p> <p>C/O. Superficial wound was dressed and O arm</p> <p>A/CX3. I suspect</p>			
12/5/94	<p>RN note</p> <p>S: "I am angry with J.A. &amp; the warden." Demanding to see J.A. &amp; the warden</p> <p>O: A/CX3. Demanding to see J.A. &amp; the warden. Information was passed on to Security. Took med. O Autha</p> <p>C/O. Superficial wound was dressed and O arm</p> <p>A/CX3. I suspect</p>			



\*BEGIN USING FROM BOTTOM UP

PCN

State of Illinois  
Dept. of CorrectionsPRESCRIPTION ORDER  
Chart Copy (Not a prescription)Patient Rivera, Miguel Reg. # N23881 Date: 8/26/02

Problem

ORDER: (Physician's Signature After Last Order) INH 900mg 2 times a wk  
56 50mg 4 times a wk 230k

DEA/Illinois Lic. #

Physician (Print)

☐ May Substitute☐ May Not SubstituteDCA 7000  
IL 426-1417

Noted by:

M.D.  
M.D.  
Date: 8/26/02 11457State of Illinois  
Dept. of CorrectionsPRESCRIPTION ORDER  
Chart Copy (Not a prescription)Patient Rivera Miguel Reg. # N23881 Date: 5.2.02

Problem

ORDER: (Physician's Signature After Last Order) No Mental Dis  
↓ Tobril 25mg h.s x 1W D/E Tobril on 5/10/02  
Do not crush tablet

DEA/Illinois Lic. #

Physician (Print)

☐ May Substitute☐ May Not SubstituteDCA 7000  
IL 426-1417

Noted by:

M.D.  
M.D.  
Date: 5/2/02State of Illinois  
Dept. of CorrectionsPRESCRIPTION ORDER  
Chart Copy (Not a prescription)Patient Rivera, Miguel Reg. # N23881 Date: 5/2/02

Problem

ORDER: (Physician's Signature After Last Order) metron 400mg po TID Peax 3 (not)  
80

STATE OF ILLINOIS - DEPARTMENT OF CORRECTIONS

## MEDICAL PROGRESS NOTES

Resident's  
NameRivera, MiguelResident's  
NumberN23881

DATE/ TIME	PROB- LEM #	S.O.A.	PLANS
		PHYSICIAN ADMISSION NOTE:	
		CHIEF COMPLAINT: <u>Psych Admission</u>	
		<u>to Infirmary</u>	
		Hx of PRESENT ILLNESS:	
		<u>Depression</u>	
		<u>SMOKES - 2 1/2 pkts/day</u>	
		PAST MEDICAL Hx:	
		REVIEW OF SYSTEMS: <u>BRONCHITIS</u>	
		<u>SINUSITIS</u>	
		<u>Depression</u>	
		ALLERGIES: <u>PCN</u>	
		MEDICATIONS: <u>LCPI D 100mg po BID</u>	
		<u>PRIZAC 20 MG po Q/Hs</u>	
		<u>TRIZADONE 100mg po Q/Hs</u>	

JK  
APR 29/05  
8/29/05

OK  
MAY 2  
8/29/05

NOIS DEPARTMENT OF CORRECTIONS  
Offender Outpatient Progress Notes  
Stateville Correctional Center

## Offender Information:

Rivera Miguel ID#: N23881  
Last Name First Name MI

Date/Time	Subjective, Objective, Assessment	Plans
6/28/5	<b>INFIRMARY ADMISSION SHEET</b>	
1100	S: (Complaints):	P. 10' watch
		Paper gun
	Reason for Admission: Depression	only.
	Admitting Physician: Malone	Psych to eval
	O: D.O.B: 10-28-64	
	Age: Wt: 225 Ht: 5'11"	
	T: 98.2 P: 73 R: 16 B/P: 118/77	
	Allergies: PCW	
	Other Medical Conditions:	
	Bronchitis	
	Sinusitis	
	Current Medications: Xopia	
	Prozac	
	Traxedone	
	Assistive Devices*	
	Glasses: Contact Lenses: Artificial Eye: Hearing Aid:	
	Dentures: Artificial Limb:	
	Paralysis: Weakness:	P. Res

Distribution: Offender's Medical Record

\* Check those items which apply

\*\* May be stated if unable to measure

Printed on Recycled Paper

DOC 0084 (Eff. 9/2002)

(Replaces DC 3142)

Excel-G:\wpfiles\Forms\Med. Prog. Notes\Forms\Infirmary Admission

8/29/05

\*BEGIN USING FROM BOTTOM UP

pcn

State of Illinois  
Dept. of Corrections

Discharge Cancelled

**PRESCRIPTION ORDER**  
Chart Copy (Not a prescription)

Patient Rivera, Miguel Reg. # N23881 Date: 9/16/04

Problem Adjust. De Depressed mood

ORDER: (Physician's Signature After Last Order)

DOT Cough/bleed Trazadone 150mg hs  
Dec 10.16.04

DEA/Illinois Lic. # \_\_\_\_\_ Physician (Print) NVALLABHANENI

☐ May Substitute

☐ May Not Substitute

DCA 7000  
IL 426-1417

Noted by: N. Vallabhaneni

Date: 9-16-04

pcn

State of Illinois  
Dept. of Corrections

**PRESCRIPTION ORDER**  
Chart Copy (Not a prescription)

Patient Rivera, Miguel Reg. # N23881 Date: 9/12/04

Problem Suicidal, Insomnia

ORDER: (Physician's Signature After Last Order)

1) Change Trazadone to 150 mg qhs  
2) Trazadone 50 mg qhs  
3) Trazadone 50 mg now } x 15 days  
DOT C+E

DEA/Illinois Lic. # \_\_\_\_\_ Physician (Print) B. V. Narasimhan

☐ May Substitute

☐ May Not Substitute

DCA 7000  
IL 426-1417

Noted by: A. Sumner

Date: 9-12-04

pcn

State of Illinois  
Dept. of Corrections

**PRESCRIPTION ORDER**  
Chart Copy (Not a prescription)

Patient Rivera - Miguel Reg. # N23881 Date: 9.8.04

Problem Depression

ORDER: (Physician's Signature After Last Order)

DOT Cough/bleed Trazadone 100mg hs  
from Stock Dec 10.8.04

DEA/Illinois Lic. # \_\_\_\_\_ Physician (Print) NVALLABHANENI

☐ May Substitute

☐ May Not Substitute

DCA 7000  
IL 426-1417

Noted by: N. Vallabhaneni

Date: 9/8/04



Illinois Department of Corrections

## Health Status

Transferring Facility: JRC/JOL

Date: 1/31/02

Time: (AM) PM

Allergies:

Food Handler Approved: Y / N

Current Acute Conditions/Problems:

Chronic Conditions/Problems: Depression - Bronchitis - Sinusitis - Headaches

Current Medications - Name, Dosage, Frequency, Duration:

Acute Short-term Medications: Vastolol Bisopin 50mg BID x 7d.

Morbim 400mg Q8h pink sweets Saline nasal spray Q6h pm

Chronic Long-term Medications:

Chronic Psychotropic Medications: Vastolol Risperidol 1mg BID x 30d.

TRAZADONE 100mg po QHS x 30 days

Current Treatments:

Dietary Restrictions:

Follow-up Care Needed:

psych phr - INH therapy + HIV Counseling

Chronic Clinics:

Specialty Referrals:

Significant Medical History:

No head injury - Hx HTN @ meds  
PSIW 89

Physical Disabilities/Limitations:

Assistive Devices/Prosthetics:

Mental Health Issues:

Hx Suicide Attempt: ☐ Date: / /

Glasses:

Contacts:

Hx Psych Med ☐Hx MPC/STC ☐Substance Abuse: Alcohol: ☐ Drugs: ☐

R &amp; C Use Only

☒ LAB ☐ EKG ☒ CXR ☒ Dental☐ MEDS ☒ MH ☐ Other☐ Packet Complete

Signature and Title

## Transfer Reception Screening

Facility:

Therapeutic

Date: 2/1/02

Time: 5:30 AM (PM)

S: Current Complaint:

none

Current Medications/Treatment:

psych + INH

O: Physical Appearance/Behavior:

Clean &amp; appropriate

Deformities: Acute/Chronic

none

T 98.6 P 56 R 18 B/P 128/74

A: stable

P: Disposition: (Instructions: Check or circle as appropriate)

1) ☒ Routine, Health Information Given☐ Emergency Referral2) ☒ Physician Referral:☒ Urgent - Routine☒ Medication Evaluation☐ Therapeutic Diet☐ Special Housing☐ Work/Program Limitation☒ Specialty Referrals☒ Chronic Clinics☒ Other3) ☐ Infirmary Placement of

Other: AFN 2-2-02

Signature and Title

46

## STATE OF ILLINOIS - DEPARTMENT OF CORRECTIONS

## MEDICAL PROGRESS NOTES

**Facility**

Menard Co

Inmate's Name

RIVERA, MIGUEL

Inmate's Number 133881

[illegible]

**Menard Correctional Center**  
**CRISIS INTERVENTION**  
 Referral/Face Sheet

23881

NAME: Rivera, Miguel NUMBER: 112 351 CELL ASSIGNMENT: 112 5-46

Reason for Referral: Cut self on @ arm + rt side

Crisis Team Member Interview Date: 5-18-04 Time: 5:15 PM

SUBJECTIVE: Brought to HCU & SI scratches Hearing voices  
 afraid of being hurt I got the shakes. They won't stop.

OBJECTIVE: Crying, hands shaking Fair eye Contact

Long history of being afraid

ASSESSMENT: act thought process

PLAN: Refer to MD

Crisis Team Member: Miguel

Mental Health Professional/Duty MD Interview Date: 5-18-04 Time: 5:15 PM

SUBJECTIVE: I am feeling depressed

OBJECTIVE: Depressed

ASSESSMENT: Depressed & suicidal ideation

PLAN: Admit

Psychiatric Observation: \_\_\_\_\_ Close Supervision: \_\_\_\_\_ Suicide Watch: ✓

Mental Health Professional: [Signature]

**NOTIFICATIONS**

Cell House Captain: Lt Zigler Date/Time: 5-18-04 5:30 pm

Shift Captain: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Duty Administrative Officer: Maj Martin Date/Time: 5-18-04 6:15 pm

Reviewed by Crisis Team Leader: [Signature] Date: 5/18/04

MENTAL HEALTH EVALUATION  
MENARD CORRECTIONAL CENTER

NAME: RIVERA, MIGUEL

NUMBER: N23881

DATE: April 23, 2004

REASON FOR REFERRAL: Crisis referral.

SUBJECTIVE DATA: Mr. Rivera was brought over to the Health Care Unit second time during the day. It was informed that he cut his left arm and indicated that he needed special placement. His problems were related to his fear of getting hurt or killed by G.D.'s. This problem has existed for a number of years. He was in seg and also in Protective Custody. He created many problems and crisis in order to be admitted to the Health Care Unit and also accomplish a cell location either in seg or P.C. in order to remain safe. He also reported that he was avoiding going to the dinning room or even buying commissary.

OBJECTIVE DATA AND HISTORY: During the interview he broke into tears. He was extremely fearful, scared and concerned. He spoke about his problems. He still wants to refuse housing in order to go to the Segregation Unit.

ASSESSMENT/DIAGNOSIS (PROVISIONAL/FINAL):

Axis I -- Chronic adjustment disorder with depressed mood.

Axis II -- None.

SUMMARY AND TREATMENT PLAN: He was given Elavil 100 mg. at bedtime and return in one week for follow-up.

*N. Vallabhaneni* 5.24.04  
N. Vallabhaneni, M.D. Date  
Psychiatrist

NV:kw

cc: Medical File  
Master File

Approximate date received by WPC: April 23, 2004  
Approximate date completed by WPC: May 18, 2004

Facility: Stateville  
Correctional Center

MEDICAL SUMMARY

Resident's Name: Rivera Miguel Resident's Number: U23881

Age: 41 Birthdate: 10-28-64 Sex: M Race: Hisp

Date Hospitalized: 6/28/05 Date Discharged: 7-1-05

Active Problems/Diagnosis:  
DX Generalized Anxiety Disorder.

Subjective/Objective (Brief History):

Operations

USE short, noted x3  
TC suspicious TP organized  
SI/HIE AH/VHE

Laboratory and X-ray Data:

Complications:

Assessment and Prognosis: poor problem solving and coping skills worsened  
by anxiety disorder

Plan:

Medications: Prozac 20mg hs  
Trazadone 100mg hs

Treatment:

Follow-Up: Psychiatry and psychology to follow

RESULT: ( ) Recovered (X) Improved ( ) Not Improved ( ) Not Treated

7-1-05

Date

86W

MD

Paula M. Perez, MD

DC7104-14  
9-78

4 A + B  
2

JK  
Arlyne  
8/28/05

EXHIBIT-D, # 5.

July 29, 2007.

(1)

Dear Heather,

(this is a copy.)

I hope and pray that when you do receive this letter, that you and your other kids is in the best of health and good spirits. as far as my self I am doing good and I'm still fighting <sup>for</sup> my freedom in this wrongful - conviction and wrongful sentencing of kidnapping. that you truly know I did not committed Heather and I have received a letter from your father Don carson, talking bad about you. But I hope and pray that you will tell Mike I am sorry, please forgive me,

Heather I giving my life over to god and I been go doing Bible study 4:12 yrs now. and this letter to you is a important letter, you know deep in your heart that my son Orlando, needs me badly, to be a real father to him and help him. I just can't believe what you let <sup>that</sup> happen. I'm not going to Judge you its not my place to, and in alot of ways I feel sorry for you and them kids and I hope to god that you will get over <sup>over</sup> it.

your self together no one can't help you, But  
god and your self, and I pray that them  
kids have not been destroyed and disappointed  
in life...and you do know that if orlango go  
live with my sister that will be the best  
thing for him, you ~~too~~ know that orlango  
will be taking care of and deeply loved  
and even if I am doing this wrongful  
time, I will pull a rabbit out of a hat  
to get help to support my son as much  
as I can...and you know Tom will  
all ways help me, I have to write  
to orlango case worker to get his side  
in shoes and clothing. I am sending  
him some things for his B-day, and  
for Christmas to. I will come last  
like always But god will see me  
through and help me, But anyways  
I pray that you will write a letter  
telling the gods truth that you and your  
~~too~~ kids lived with me as a family, you  
do know you did tell the Jury at trial  
you and your kids was not kidnapped  
and you did tell that lady Det. Karen,  
skipper, the same too. so I hope and  
pray you will do what's Right for orlango  
sake please heather, its a real so  
shame that orlango don't know that  
I am his father heather. But I do promise  
he will learn I am his true father,  
and I truly do pray that you do



Learn to stop living to people and  
 stop live living the wrong way of life.  
 I am even sorry for what I did wrong to you  
 and I don't blame you, every body blames  
 your father and you a little bit. But  
 Judgment day is coming. I hope and pray  
 you do understand god is Real. Serious,  
 will I hope and pray that you will mail  
 me a statement like you did before and  
 if not I don't believe you care for or long  
 for him to be with me taking care of  
 him, I pray you will tell how they  
 set me up in court and my attorney  
 the truth whether clear your soul  
 your getting too old now to live this  
 this way whether, take care  
 and may the Lord Jesus Christ and  
 the father god help you and them kids,  
 July 29, 2007  
 C.E.

Sincerely,

Miguel Rivera #64650  
 CMCE/CMRA/APA-1-B-F-112  
 P.O. Drawer-1328  
 Las Lunas, N.M. 87301

**PLAN REVIEW REPORT**

**PARENT**

REVIEW DATE: April 08

NAME: Orlonzo Rivera

DOB: 11/08/2000

**COPY**

**RECEIVED**

MAR 14 2008

WOOD CO. DEPT. OF SOCIAL SERVICES

(1) What have you been told is the plan for your child?

Return home, long-term foster care, adoption, emancipation, other, not known

I feel maria Rivera an her family  
Are wonderful people. I know she loves orlonzo  
and I am getting more mettill.

(2) Do you agree with the plan? Why?

All maria is wonderful

g given to you and your child to achieve the plan

your child get along with the people where he/she lives

maria maria loves orlonzo

Have your child visited since placement in an alternate care  
does the child react to these visits?

H. Carson  
1150 Letman #2A  
Discordia Rapids  
WI, 54494

CENTRAL WI 544  
12 OCT 2007 PM 1 L

Miguel Rivera  
Inmate # 64650  
CNMCF/CMRU/Unit # APA-18 F12  
P.O. Drawer 1328  
105 Lunas, NM 87031

Wood County  
P.O. Box 8095  
Wisconsin Rapids, WI 54495-8095

turn over  
N BACK TO  
Please.

children. I fill bad. But I love all 6 of my sons and having them.

Wha'nt be love. Because I know I cant take care of them

my mood swings are to wild and as I'm getting older its worse Oklonzo already has problems and

he needs a stable environment.

I don't fill I'll ever be normal.

having 6 kids is not normal when

you dont plan. And its not fair to them my actions are to suppon taneous moving all the time, different men

of the month, I had my children live in many homes, and seen

many men. its not fair to them. They deserve a wonderful life.

I Love you Oklonzo

Heather

(2.)

EXHIBIT-F #6.

**DOROTHY BROWN**  
**CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

OFFICE OF THE CIRCUIT COURT CLERKS OF COOK COUNTY  
2650 S. CALIFORNIA-5<sup>TH</sup> FLOOR  
CHICAGO, ILLINOIS 60608  
(773) 869-3143

Tam.

DATE: SEPTEMBER 18, 2006

PETITIONER )  
 )  
VS. )  
 )  
THE PEOPLE OF THE STATE OF ILLINOIS )  
RESPONDENT )

CASE NO: 01CR-02646-01

TO: MIGUEL RIVERA #64650

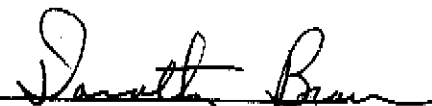
ADDRESS: LEA COUNTY CORR. FACILITY AT HOBBS  
6900 WEST MILLEN

CITY & STATE HOBBS, NM 88244

NOTICE

Pursuant to Illinois Supreme Court Rule 651, as Amended and Adopted on January 25, 1996, and effective the same day to read as follows:

"You are hereby notified that on SEPTEMBER 14, 2006 the court entered an order, a copy of which is enclosed herewith. You may have a right to appeal. In the case of an appeal from a post-conviction proceeding involving a judgment imposing a sentence of death, the appeal is to the Illinois Supreme Court. In all other cases, the appeal is to the Illinois Appellate Court in the district in which the circuit court is located. If you are indigent, you have a right to a transcript of the record of the post-conviction proceedings and to the appointment of counsel on appeal, both without cost to you. To preserve your right to appeal you must file a notice of appeal in the trial court within 30 days from the date the order was entered."

  
Clerk of the Circuit Court

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT- CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS )

VS. )

MIGUEL RIVERA #64650 )

CASE NO. 01CR-02646-01 )

**CERTIFIED REPORT OF DESPOSITION**

The following disposition was rendered before the Honorable judge **MARJORIE C. LAWS**

STATE'S MOTION TO DISMISS DEFENDANT'S POST-CONVICTION PETITION

IS ALLOWED.

I hereby certify that the foregoing has been entered of record on the above captioned case.

Date SEPTEMBER 18, 2006

*Darrel Brown*  
Clerk of the Circuit Court

**CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**

**ENTERED**  
JUDGE MARJORIE LAWS-1698

SEP 14 2006

DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL  
DEPUTY CLERK**TO THE APPELLATE COURT OF ILLINOIS  
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-CRIMINAL DIVISION****PEOPLE OF THE STATE OF ILLINOIS,  
Plaintiff-Respondent,**

vs.

**MIGUEL RIVERA,  
Defendant-Petitioner.**

No. 01 CR 264601

**Hon. Marjorie Laws,  
Judge Presiding.****Attorney: Cook County Public  
Defender****NOTICE OF APPEAL**

**Appeal is taken from the order or judgment entered in the Circuit Court of Cook County dismissing/denying Defendant-Petitioner's petition seeking post-conviction relief/habeas corpus/new-evidence relief:**

Appellant's Name: Miguel Rivera, N.M.# 64650

Appellant's Address: Lea County Correctional Facility at Hobbs  
6900 West Millen  
Hobbs, NM 88244Appellant's Attorney: Cook County Public Defender  
69 W. Washington, 15<sup>th</sup> Floor, Chicago, IL 60602  
312-603-0600Date of Judgment:  
September 14, 2006**Edwin A. Burnette**  
Cook County Public Defender  
Counsel for AppellantBy: *Andrea Monsees*  
Andrea Monsees  
Assistant Public Defender

Dates to be transcribed: 2003: 12/09; 2004: 01/09, 01/23, 02/20, 02/25, 03/25, 06/08, 06/11;  
08/12, 08/17, 09/21, 12/02; 2005: 03/03, 03/22, 03/23, 05/17, 05/31, 06/03, 07/27 08/18, 09/13,  
09/27, 11/29; 2006: 01/04, 02/02, 03/09, 03/15, 03/21, 04/05, 06/29, 07/27, 08/01, 09/14.

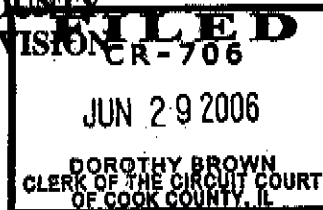
Judge: *Marjorie P. Laws*Date: *9-14-06*



*EXHIBIT - G # 7.*

BA / 8-1-06  
 7 REPOS

IN THE CIRCUIT COURT OF COOK COUNTY  
 COUNTY DEPARTMENT-CRIMINAL DIVISION



PEOPLE OF THE STATE OF ILLINOIS

Respondent

vs.

MIGUEL RIVERA

Petitioner

(  
 ( CASE NO. 01CR2646  
 ( HONORABLE MARJORIE LAWS  
 ( Judge Presiding  
 (

**MOTION TO DISMISS**  
**PRO SE AND SUPPLEMENTAL PETITIONS**  
**FOR POST-CONVICTION RELIEF**

Now come the People of the State of Illinois, by and through their attorney Richard A. Devine, State's Attorney of Cook County, Illinois, through his assistant, Carol Rogala, and respectfully move this Honorable Court to dismiss the instant petition filed in the above-captioned case. In further support thereof, the People state as follows:

**OVERVIEW**

Petitioner's *pro se* claims lack the proper factual or documentary support and may be dismissed on that basis alone. Petitioner's claims of ineffective assistance of trial counsel likewise fail because petitioner fails to demonstrate a *bona fide* doubt as to his fitness for trial or that the jury should have been instructed on the lesser-included offense of unlawful restraint. Petitioner's passing mention of appellate counsel's incompetence is properly dismissed because petitioner fails to make any argument on this claim.

**PROCEDURAL HISTORY**

Petitioner was convicted of three counts of aggravated kidnapping and one count of aggravated battery following a jury trial. On January 17, 2002, the Honorable Edward M. Fiala, Jr., sentenced petitioner to concurrent 40-year prison terms on the kidnapping charges and a

concurrent term of five years on the aggravated battery charge. On March 14, 2003, the appellate court affirmed the trial court's order in an unpublished order pursuant to Supreme Court Rule 23. People v. Rivera, No. 1-02-0699. Leave to appeal to the Illinois Supreme Court was denied on October 3, 2003. The only issue raised on appeal was whether the trial court erred in denying petitioner's *pro se* post-trial motion alleging ineffective assistance of counsel due to the trial court's failure to investigate the allegation and appoint new counsel.

On November 17, 2003, petitioner filed a *pro se* petition under the Post-Conviction Hearing Act, 725 ILCS 5/122-1 et. seq. (West 2003). Petitioner alleges that trial counsel was ineffective in several ways: 1) failing to request a Batson hearing; 2) failing to present testimony of an alibi witness; 3) failing to request a new trial hearing; 4) failing to argue that petitioner lacked the capacity to form the requisite intent to commit aggravated kidnapping and aggravated battery; 5) failing to investigate and present available mitigating evidence. (*Pro Se* Petition at 3) Petitioner also alleged that his extended-term sentence is unconstitutional because he was sentenced with out the benefit of mitigating evidence trial counsel failed to discover. (*Pro Se* Petition at 3) Petitioner finally challenged the extended-term penalty statute as unconstitutional. (*Pro Se* Petition at 3)

On July 27, 2005, appointed counsel filed a first supplemental petition alleging that trial counsel was ineffective for failing to secure a jury instruction on the lesser included offense of unlawful restraint.

On March 9, 2006, appointed counsel filed a second supplemental petition alleging that trial and appellate counsel were ineffective for failing to challenge petitioner's extended-term sentence. In addition, petitioner alleges that a *bona fide* doubt existed at the time of his trial that he was fit for trial resulting in a due process violation. Petitioner further alleges trial counsel was

ineffective for failing to investigate and present petitioner's mental health status to the trial court for a fitness determination and/or to the jury as an insanity defense or as a means to contest the *mens rea* related to the charges of which the petitioner was convicted.

### **STATEMENT OF THE FACTS**

On the morning of August 28, 2000, Michael Ostrowski was leaving his condominium building at 6166 Granville in Chicago. (R, B-15) Heather Carson, a former girlfriend, was located in the upstairs bedroom asleep with her and Mr. Ostrowski's two children. (R, B-20) The defendant, later identified as Miguel Rivera, also had relations with Mrs. Carson, who was currently pregnant with his child. (R, B-47)

At approximately 6:00 a.m., Rivera confronted Mr. Ostrowski outside of his condominium building at 6166 Granville in Chicago. (R, B-17) Rivera asked Mr. Ostrowski if he could see Mrs. Carson. (R, B-17) Mr. Ostrowski escorted Rivera into the building and both men then proceeded onto the elevator up to Mr. Ostrowski's condominium. (R, B-18) Once at the residence, Mr. Ostrowski instructed Rivera to wait at the door while he went up the stairs to inform Mrs. Carson of Rivera's presence. (R, B-18) Rivera dismissed these instructions and began following Mr. Ostrowski up the stairs toward the bedroom where Mrs. Carson was located. (R, B-19) While following Mr. Ostrowski to the bedroom, Rivera stabbed Mr. Ostrowski in the back with a knife. (R, B-19) Mr. Ostrowski went through the bedroom door where Mrs. Carson and the children were located. (R, B-20) Rivera then proceeded to stab Mr. Ostrowski again in the chest. (R, B-20) At this point, Mrs. Carson awoke and saw Rivera and Mr. Ostrowski next to her and the children, Isaiah and Nicholas Ostrowski. (R, B-49)

Rivera then shouted at Mrs. Carson asking if she had intercourse with Mr. Ostrowski. Mrs. Carson denied this allegation and Rivera then slapped her in the face. (R, B-50) During this

period, Mrs. Carson noticed the blood on Mr. Ostrowski. (R, B-53) At this point, Mr. Ostrowski also realized that he had been stabbed. Mr. Ostrowski then panicked and exited the room. (R, B-53) Mr. Ostrowski made his way out of the apartment and down to the lobby of the building. (R, B-21) The doorman of the building observed Mr. Ostrowski bleeding in the lobby of the building. (R, B-124) Mr. Ostrowski approached the doorman and told him that a man with a gun had stabbed him. (R, B-125) Mr. Ostrowski also stated that the same man was on his way down from his apartment and was going to kill him and/or the doorman. (R, B-125) The doorman then proceeded to dial 911 and contact the Chicago Police Department. (R, B-125, 126)

Back in the condominium, Rivera demanded that Mrs. Carson come with him. (R, B-54) Mrs. Carson refused and in return Rivera proceeded to grab and pull Mrs. Carson's hair. (R, B-54) Rivera then grabbed her son, Nicholas Ostrowski, and put the knife up to his throat. Rivera threatened to kill the child if Mrs. Carson did not go with him. (R, B-54, 55) Rivera also grabbed Mrs. Carson's other child by his arms so that his feet were dangling from the ground. (R, B-55) Mrs. Carson, in fear for her children's safety as well as her own safety, agreed to go with Rivera, who continued to possess the knife throughout the event. (R, B-56)

Rivera then forced the two children and Mrs. Carson through the back door of the condominium, down the back stairs, and out of the building. (R, B-56, 57) The doorman of the building observed the two children, Mrs. Carson, and Rivera exiting the backdoor of the building. (R, B-127) The doorman also noticed that Mrs. Carson was screaming and Rivera's arm was locked together with Mrs. Carson's arm. (R, B-127)

Rivera then forced the two children into the car and abruptly left the area. (R, B-57) While in his car, Rivera threatened the life of Mrs. Carson's children if she tried to escape from

the car. (R, B-57) Rivera also asked Mrs. Carson again if she had intercourse with Mr. Ostrowski and then proceeded to put his hand on her vagina. (R, B-58)

Four months later, Rivera was arrested by the Chicago Police Department for this incident.

### **ARGUMENT**

In order to be entitled to post-conviction relief, petitioner must establish a violation of a federal or state constitutional right in the proceedings that produced the judgment being challenged. People v. Tenner, 175 Ill.2d 372, 677 N.E.2d 859 (1997). A post-conviction proceeding is not a direct appeal, but rather a collateral attack on a judgment of conviction.

Petitioner is not entitled to an evidentiary hearing as a matter of right. People v. Hopley, 182 Ill.2d 404, 696 N.E.2d 313 (1998). Rather, a hearing is required only if petitioner makes a substantial showing, based on the record and supporting affidavits, that his constitutional rights were violated. Tenner, 175 Ill.2d 372, 677 N.E.2d 859 (1997).

#### **I. PETITIONER'S *PRO SE* CLAIMS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL LACK THE FACTUAL AND DOCUMENTARY SUPPORT REQUIRED FOR POST-CONVICTION RELIEF.**

All of petitioner *pro se* allegations of ineffective assistance of trial counsel fail to establish a substantial violation of a constitutional right because petitioner has failed to properly support his allegations with factual allegations and/or required documentation. The failure to either include these necessary items or explain their absence constitutes a fatal defect in the petition. People v. Collins, 202 Ill. 2d 59, 728 N.E.2d 195 (2002). Furthermore, claims based on conjecture and speculation cannot support a finding of ineffective assistance of counsel. People v. Gosier, 165 Ill. 2d 16, 649 N.E.2d 364 (1995).

First, petitioner makes an unsupported allegation that trial counsel was ineffective for failing to request a Batson hearing. Petitioner fails to provide any facts or argument to support this allegation; he does nothing more than include the claim in a laundry list of trial counsel's alleged failures. Bare contentions without argument or citation to authority do not merit consideration. People v. Perea, 347 Ill.App.3d 26, 807 N.E.2d 26 (1<sup>st</sup> Dist. 2004), citing Obert v. Saville, 253 Ill.App.3d 677, 624 N.E.2d 928 (2<sup>nd</sup> Dist. 1993). Thus, the court should dismiss this claim.

Second, petitioner claims that trial counsel was ineffective for failing to call a witness. Petitioner alleges that attorney Richard Duffin would have testified to impeach the victim in the case, Heather Carson, on whether she saw petitioner with a knife (*Pro se* petition at page 2) and on the ultimate issue of whether she was kidnapped. (*Pro se* petition at page 3) Petitioner fails to provide an affidavit from Mr. Duffin. Instead, petitioner has attached a letter from Mr. Duffin which only indicates he spoke to trial counsel about the case. Nothing in the letter supports petitioner's allegations regarding the substance of Mr. Duffin's trial testimony had he been called at trial. When a post-conviction petitioner attacks the competency of his trial counsel for failing to call a witness, he must attach an affidavit from that witness and he must explain the significance of the witness's testimony. The petitioner's affidavit showing the potential testimony of the witnesses, by itself, is insufficient. The petitioner must attach to his petition for post-conviction relief affidavits from the witnesses themselves showing their potential testimony. People v. Guest, 166 Ill.2d 381, 655 N.E.2d 873 (1995).

Petitioner's failure to attach an affidavit from Mr. Duffin is fatal to this claim of ineffective assistance of counsel.

Third, petitioner claims ineffective assistance of counsel for failing to request a new trial hearing. Petitioner's claim is clearly refuted by the record. Trial counsel filed and argued a motion for a new trial, which was denied by the trial court. (R, D-3). Therefore, petitioner's claim that trial counsel was ineffective for failing to request a new trial hearing should be dismissed because the record clearly refutes petitioner's allegation.

Fourth, petitioner claims trial counsel failed to argue that petitioner lacked the mental capacity to form the requisite intent to commit aggravated kidnapping and aggravated battery. Once again petitioner fails to do anything more than make an unsupported allegation. For that reason, this claim should be dismissed. The People will address the claims related to petitioner's mental capacity raised in the supplemental petitions filed by counsel below.

Fifth, petitioner claims trial counsel was ineffective for failing to investigate and present available mitigating evidence. Specifically, petitioner states that trial counsel failed to investigate petitioner's mental state and present that information in mitigation. However, the record during the sentencing hearing clearly refutes the petitioner's claim. (R, D-22). Specifically, trial counsel states:

Mr. Rivera as shown by the pre-sentence investigation on page six suffers from depression starting in 1983. He was prescribed with Haldol and he stopped taking that medication when he was released from IDOC in 1997.

Also he testified he stated in the pre-sentence report he had a problem with alcohol. He started drinking when he was 18. He was drinking six or seven shots of Crown Royal and several cans of beer three to five times a week. He thought he did have a problem with alcohol. I believe that was a factor in this case. (R, D-22)

Petitioner's claim that trial counsel was ineffective for failing to investigate and present available mitigating evidence is clearly refuted by the record, and therefore should be dismissed.



**II. PETITIONER FAILS TO SHOW A DUE PROCESS VIOLATION BECAUSE HE HAS NOT SHOWN THAT THERE WAS A *BONA FIDE* DOUBT AS TO HIS FITNESS TO STAND TRIAL.**

Petitioner claims that he was not fit to stand trial, and therefore his trial, convictions, and sentences violated due process under both the United States and Illinois Constitutions. (2<sup>nd</sup> Supplemental Petition at page 4) The due process clauses of the Illinois and United States Constitutions prohibit the prosecution of a defendant who is unfit for trial. Cooper v. Oklahoma, 517 U.S. 348, 116 S. Ct. 1373 (1996); accord People v. Haynes, 174 Ill.2d 204, 673 N.E.2d 318 (1996), People v. Goodman, 347 Ill.App.3d 278, 806 N.E.2d 1124 (1<sup>st</sup> Dist. 2004. A person is presumed to be fit to stand trial unless a mental or physical problem renders him unable to understand the nature and purpose of the proceedings against him or to aid in his defense. 725 ILCS 5/104-10 (West 2000); People v. Vallo, 323 Ill.App.3d 495, 752 N.E.2d 481 (1<sup>st</sup> Dist. 2001), citing People v. Murphy, 72 Ill.2d 421, 381 N.E.2d 677 (1978).

To support this claim, petitioner first attached documentation regarding an educational evaluation from the Illinois Department of Corrections. The evaluation was administered December 14, 1990. This evaluation regarding the petitioner's educational achievements from over twelve years prior to the relevant time does nothing to support petitioner's claim and does not establish a *bona fide* doubt as to his fitness to stand trial in 2002.

Petitioner next provides documentation from Social Security Administration records that shows the petitioner was receiving benefits in 1999-2001. This documentation likewise does not suggest petitioner was unfit to stand trial. The mere fact petitioner has limited mental capacity does not by itself raise a *bona fide* doubt of his fitness for trial. See People v. Murphy, 72 Ill. 2d 421, 381 N.E.2d 677 (1978). Furthermore, petitioner's fitness refers only to his ability to

function within the context of a trial such that petitioner maybe fit to stand trial, although his mind is otherwise unsound. See People v. Haynes, 174 Ill.2d 204, 773 N.E.2d 318 (1996)

Petitioner finally provides documentation from the Illinois Department of Corrections regarding the petitioner's medical records. The medical records show that petitioner is currently suffering from depression and has been previously diagnosed with depression. Moreover, the documentation shows that petitioner has received various prescription medications from the Illinois Department of Corrections beginning in 2002 and continuing into the present. The fact petitioner has some mental disturbance, requires psychiatric help, or takes psychotropic medication does not by itself necessarily raise a *bona fide* doubt as to petitioner's fitness for trial. People v. Damico, 309 Ill.App.3d 203, 722 N.E.2d 194 (2<sup>nd</sup> Dist. 1999).

The documentation does not suggest that petitioner was unfit to stand trial; instead, it merely provides petitioner's diagnosis after the trial and his current medications. Petitioner's conclusion that he was unfit to stand trial, absent more, is insufficient to require relief.

In addition, the record belies any claim that petitioner did not understand the nature of the proceedings or was unable to assist in his defense. Petitioner exhibited competent and rational behavior at trial. For example, petitioner gave extensive argument in support of his *pro se* motion for a new trial and continuance. This testimony conveys no indication that petitioner did not understand the nature or purposes of those proceedings. (R, D-9)

The petitioner also engaged in colloquies with the trial judge in which he was responsive to the court's inquiry and appropriately acknowledged certain rights. (R, B-150, D-4). Such exchanges do not display any confusion about the nature of the proceedings and, consequently refute petitioner's claim. See People v. Ralon, 211 Ill.App.3d 927, 570 N.E.2d 742 (1<sup>st</sup> Dist. 1991). Thus, petitioner has failed to establish a *bona fide* doubt as to his fitness to stand trial.

Based on the foregoing, the petitioner's *pro se* petition and second supplemental post-conviction petition on the issue of petitioner's fitness for trial should be dismissed because petitioner fails to show a due process violation.

### III. PETITIONER'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO INVOKE A FITNESS HEARING FAILS UNDER THE STRICKLAND TEST.

Petitioner claims trial counsel was ineffective for failing to apprise the trial judge that a fitness hearing was necessary. To prevail on a claim of ineffective assistance of counsel, petitioner must show that (1) counsel's performance was so seriously deficient as to fall below an objective standard of reasonableness under prevailing professional norms, and (2) the deficient performance so prejudiced the petitioner as to deny him a fair trial. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). A review of counsel's conduct is performed under a strong presumption that the conduct fell within the wide range of reasonable professional assistance. People v. Steward, 295 Ill.App.3d 735, 693 N.E. 2d. 436 (1<sup>st</sup> Dist. 1998).

To establish that trial counsel's alleged incompetence prejudiced him within the meaning of Strickland, petitioner must show that facts existed at the time of his trial that would have raised a *bona fide* doubt of his ability to understand the nature and purpose of the proceedings and to assist his defense. People v. Easley, 192 Ill.2d 307, 736 N.E.2d 975 (2000). Petitioner is entitled to relief only if he shows that the trial court would have found a *bona fide* doubt of his fitness and ordered a fitness hearing had it been appraised of the evidence now offered. People v. Johnson, 183 Ill.2d 176, 700 N.E.2d 996 (1998).

However, as shown in Section I above, petitioner fails to show that a *bona fide* doubt that he was fit to stand trial existed at the time of trial. Because petitioner must satisfy both prongs of

the test, the failure to establish either one is fatal to his claim. People v. Ceja, 204 Ill. 2d 332, 358, 789 N.E.2d 1228, 1245 (2003).

**IV. BECAUSE NO LESSER-INCLUDED INSTRUCTION WAS TENDERED IT IS PRESUMED THAT THE DECISION WAS PETITIONER'S AFTER CONSULTATION WITH COUNSEL; TRIAL COUNSEL WAS NOT INEFFECTIVE FOR FAILING TO SECURE A JURY INSTRUCTION ON A LESSER-INCLUDED OFFENSE.**

Petitioner claims ineffective assistance of counsel because trial counsel failed to secure a jury instruction on the lesser-included offense of unlawful restraint. Petitioner further alleges that the decision not to tender the instruction was made without petitioner's consent. In support of this claim, petitioner asserts that the record fails to reveal that petitioner, personally, made the ultimate decision not to tender a lesser-included offense instruction. (1<sup>st</sup> Supplemental Petition at page 3) Petitioner seems to suggest that the trial court was required to inquire whether petitioner wanted to offer a lesser-included offense instruction.

The People first note that by not raising this issue in his post-trial motion or in his direct appeal, petitioner has, thus, forfeited the issue for post-conviction review. People v. Williams, 209 Ill.2d 227, 807 N.E.2d 448 (2004). Petitioner attempts to avoid the waiver by alleging ineffective assistance of appellate counsel. Because he fails to present any argument on this issue, the court need not consider the claim against appellate counsel. See Perea, *supra*.

Even if the court were to consider petitioner's claim, no admonition was required. People v. Medina, 2006 Ill. LEXIS 1085 (June, 2006). In reaching its conclusion that the record need not disclose whether a defendant, personally, made the decision not to tender a lesser-included offense instruction, the Medina court's rationale was guided by People v. Smith, 176 Ill. 2d 217, 223 Ill. Dec. 558 (1997). There, the appellate court addressed the issue of whether a trial court

was required to admonish a defendant regarding his right to testify and a waiver of that right. The Smith court expressed concern that such an admonition would invade the attorney-client relationship and might interfere with defense strategy. Smith, 176 Ill.2d at 235, citing United States v. Martinez, 883 F.2d 750 (9<sup>th</sup> Cir. 1989), *vacated on other grounds*, 928 F.2d 1470 (9<sup>th</sup> Cir. 1991).

Similar concern was expressed regarding the lesser-included instruction at issue in Medina. The court acknowledged that an admonishment might influence the defendant to tender an instruction he otherwise would have chosen to forgo. Medina, 2006 Ill.LEXIS 1085 at \*21. The appellate court went on to hold that where, as here, no lesser-included offense instruction is tendered, "it may be assumed that the decision not to tender was defendant's, after due consultation with counsel." Medina, 2006 Ill.LEXIS 1085 at \*22.

Furthermore, petitioner would not have been entitled to have the jury instructed on the lesser-included offense of unlawful restraint. A lesser included offense is one that is established by proof of the same or less than all of the facts needed to establish the offense charged. See People v. Novak, 163 Ill.2d 93, 643 N.E.2d 762 (1994). A lesser-included offense instruction is only proper if the evidence at trial is such that a jury could have rationally found the petitioner "guilty of the lesser offense, yet acquit him of the greater offense." Medina, 2006 Ill. LEXIS 1085, citing Schmuck v. United States, 489 U.S. 705, 109 S. Ct. 1443 (1989). Where the evidence shows that petitioner is either guilty of the greater offense or not guilty of any offense, an instruction on the lesser-included offense is unnecessary and properly refused. . . People v. Frampton, 248 Ill.App.3d 238, 618 N.E.2d 541 (1<sup>st</sup> Dist. 1993).

In Frampton, the defendant was charged with aggravated kidnapping. On appeal, the defendant argued that the trial court erred in refusing the defendant's request to instruct the jury

on the lesser included offense of unlawful restraint. After acknowledging that unlawful restraint is a lesser-included offense of aggravated kidnapping, in that all of the elements of unlawful restraint are included in aggravated kidnapping, the appellate court held that the trial court correctly refused to give the instruction. Frampton, 248 Ill.App.3d at 248. The court noted that the evidence demonstrated that the defendant was either guilty of aggravated kidnapping or not guilty of any offense. Defendant was armed with a weapon during the entire time the victim was secretly confined, throughout the incident, not just when she entered his car as he suggests. If found guilty, defendant committed aggravated kidnapping, which has the element of acting while armed with a dangerous weapon. Were defendant's version to be believed, he was not guilty of any unlawful restraint, since the victim consented to everything.

Similarly, the uncontroverted testimony at trial showed that petitioner was armed with a dangerous weapon when he stabbed the victim's ex-boyfriend in the back and in the chest (R, at B-19-20), when he threatened the life of the victim's son by holding a knife to the child's throat, (R, B-54-55), when he forcefully took the Mrs. Carson and her two small children from the condominium to his car (R, at B-56), and when he told Mrs. Carson that if she tried to leave, he would still have her son (R, at B-57).

Petitioner argued at trial and throughout his *pro se* petition that Mrs. Carson went with him voluntarily and remained with him for a period of time in Florida. If this version of events were to be believed, petitioner is not guilty of unlawful restraint because the Mrs. Carson consented to taking her children and leaving with petitioner. Thus, petitioner would not have been entitled to have the jury instructed on the lesser-included offense of unlawful restraint and trial counsel was not ineffective for failing to request the instruction.

**V. THERE WAS NO APPRENDI VIOLATION WHERE PETITIONER'S CRIMINAL HISTORY ALONE SUPPORTS HIS EXTENDED-TERM SENTENCE.**

Petitioner claims ineffective assistance of trial and appellate counsel for failing to assert his due process rights by challenging the imposition of an extended term sentence under Apprendi. The Apprendi court stated, "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. (Emphasis added.); Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348 (2000).

The extended-term sentencing statute in effect at the time petitioner committed the crimes of which he stands convicted, provided that the trial court could consider certain factors as reasons to impose an extended-term sentence. The pertinent factor in this statute as it pertains to this case reads as follows:

When a defendant is convicted of any felony, after having been previously convicted in Illinois or any other jurisdiction of the same similar class felony or greater class felony, when such conviction has occurred with 10 years after the previous conviction, excluding time spent in custody, and such charges are separately brought and tried and arise out of different series of acts. (730 ILCS 5/5-5-3.2(b)(1) (West 2001))

On May 28, 1992, petitioner pled guilty to charges including home invasion and aggravated kidnapping arising out of an incident that occurred on December 19, 1991. Petitioner was sentenced to 12 years imprisonment. Petitioner was paroled on September 20, 1997. (Presentence Investigation Report at p. 3) Even without excluding the time petitioner was in custody on that case, the crimes in the present case occurred on August 28, 2000, well within the statute's 10-year provision for imposing an extended-term sentence.

Contrary to petitioner's assertion, Apprendi does not require the fact of a previous conviction to be either pled in the indictment or proved to the jury. Recidivist statutes are specifically excluded from the Apprendi analysis. People v. Douglas, 328 Ill. App. 3d 978, 768 N.E.2d 766 (3<sup>rd</sup> Dist. 2002). Because an Apprendi challenge would have been fruitless, neither trial nor appellate counsel could be deemed incompetent for failing to challenge petitioner's sentence on that basis. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983); People v. Tenner, 175 Ill.2d 372, 677 N.E.2d 859 (1997). Therefore, this court should dismiss the petitioner's Apprendi claim because the petitioner's extended term sentence was based entirely on a prior conviction, which is excluded from the Apprendi analysis.

### CONCLUSION

Petitioner fails to establish a substantial violation of any constitutional right. Therefore, he is not entitled to an evidentiary hearing or any other relief. WHEREFORE, the People respectfully request that this Honorable Court dismiss this instant and remove the case from its call.

Respectfully submitted,

RICHARD A. DEVINE  
State's Attorney of Cook County

BY: \_\_\_\_\_

  
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EXHIBIT-H #8.

C.45

STATE OF ILLINOIS )  
 ) ss  
COUNTY OF C O O K )

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT - CRIMINAL DIVISION

THE PEOPLE OF THE )  
STATE OF ILLINOIS )

vs. )

MIGUEL RIVERA )

Case No. 01 CR 2646

Charge: ATT. MURDER

REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 12th day of  
December, 2001, this cause came on for hearing before  
the Honorable EDWARD M. FIALA, Judge of said Court,  
upon the indictment herein, the defendant having  
entered a plea of not guilty.

APPEARANCES:

HON. RICHARD DEVINE,  
State's Attorney of Cook County, by  
MR. ARUNAS BUNTINAS,  
MR. DANIEL TIERNAN,  
Assistant State's Attorneys,  
Appeared on behalf of the People;

MR. FRANK EDWARDS,  
appeared on behalf of the Defendant.

Kenneth Madoch  
Official Court Reporter  
Circuit Court of Cook County  
County Department-Criminal Division.

MAUREEN MURPHY  
FILED

JUN 04 2002

DOROTHY BROWN  
CLERK OF CIRCUIT COURT

1 Q Did you ever see her on the phone?

2 A No.

3 MR. BUNTINAS: No further questions.

4 MR. EDWARDS: Nothing.

5 THE COURT: You may step down, sir.

6 (Witness excused.)

7 THE COURT: Call your next witness.

8 MR. TIERNAN: Yes.

9 THE COURT: We're going to hear one more  
10 witness and then going to break for lunch. Lunch  
11 arrangements have been made in your jury room for you.

12 THE CLERK: Raise your right hand

13 (Witness sworn).

14 THE CLERK: Please be seated. Keep your voice  
15 up so everyone can hear you.

16 MR. TIERNAN: May I proceed?

17 THE COURT: Please inquire.

18 MR. TIERNAN: Thank you.

19 HEATHER CARSON,  
20 called as a witness on behalf of the People of the  
21 State of Illinois, having been first duly sworn, was  
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 BY

1 hysterical.

2 Q While he was on the phone with his sister,  
3 did you have an opportunity to talk to his sister?

4 A Yes, I did.

5 Q Did you tell his sister what had happened?

6 A Not at that time.

7 Q Why not?

8 A Because I wanted to check on my kids.

9 Q Did he say anything to you before you  
10 talked to them?

11 A He told me not to tell her, say you're  
12 okay. I said okay, I'm okay.

13 Q Why did you do that?

14 A Because Miguel scares me, I'm scared of  
15 Miguel.

16 Q Were you scared of him when you were  
17 talking to his sister, Maria?

18 A Yes. I didn't know how his family was, if  
19 they would stick together or not, if they would be  
20 against me or not.

21 Q Later that same day, did you make a phone  
22 call to the detectives investigating this case?

23 A Yes.

24 Q Did you tell them anything?

A I told them I was fine.

Q Why did you tell them that?

A My children were in the car, in the car with Miguel. Miguel was trying to hurt me. On the phone, he said maybe they could trace him.

Q Let me back up for a second. When you made the call to the police to tell them you were okay, you were standing outside the car at the pay phone?

A Yes.

Q And Miguel was where, inside the car?

A Uh-hum.

Q And yes?

A Yes, with the kids.

Q And while you spoke to the police, what was this defendant doing in the car?

A Kind of driving slowly.

Q Was he driving away from the pay phone?

A A little bit.

Q Eventually, within the next couple of days, you left town with this defendant, is that right?

A Yes.

Q Where did you go with him?

A I went to Florida.

Q And how long did you stay with this

1 him. He is willing to come to court.

2 MR. EDWARDS: I spoke to Mr. Duffin  
3 previously. I spoke with him today. He indicated  
4 if he was called to testify, he would testify that  
5 Miss Carson in the apartment did not see a knife,  
6 which is consistent with her testimony on the  
7 stand when she says she saw the knife when  
8 Mr. Rivera threw it over the wall and he was  
9 leaving out of the apartment.

10 So, therefore, I believe his  
11 testimony would have not mitigated the charges  
12 against Mr. Rivera; so therefore, I didn't call  
13 him.

14 THE COURT: Is that the reason you would  
15 be calling the lawyer, sir?

16 THE DEFENDANT: Pardon me?

17 THE COURT: Is that the reason --

18 MR. EDWARDS: He wants Mr. Duffin to  
19 represent him.

20 THE DEFENDANT: No, no, no. I didn't say  
21 that. I said I want you to get my witness in. He  
22 has a right to be heard at trial. That's what I  
23 stipulated to you.

24 He told me the same day of trial,

EXHIBIT C

1/17/02 post-trial

1 To sustain the charge of aggravated  
2 kidnapping, the State must prove the following  
3 propositions:

4 First: That the defendant by force or threat  
5 of imminent force carried Heather Carson from one  
6 place to another place; and

7 Second: That the defendant acted knowingly;  
8 and

9 Third: That when the defendant did so, he  
10 intended to secretly confine Heather Carson against  
11 her will; and

12 Fourth: That the defendant was armed with a  
13 dangerous weapon.

14 If you find from your consideration of all of  
15 the evidence that each one of these propositions has  
16 been proved beyond a reasonable doubt, you should find  
17 the defendant guilty.

18 If you find from your consideration of all  
19 the evidence that any one of these propositions has  
20 not been proved beyond a reasonable doubt, you should  
21 find the defendant not guilty.

22  
23  
24  
Ex A.

1 To sustain the charge of aggravated  
2 kidnapping, the State must prove the following  
3 propositions.

4 First: That the defendant by force or threat  
5 of imminent force carried Nicholas Carson from one  
6 place to another place; and

7 Second: That the defendant acted knowingly;  
8 and

9 Third: That when the defendant did so, he  
10 intended to secretly confine Nicholas Carson against  
11 his will; and

12 Fourth: That the defendant was armed with a  
13 dangerous weapon.

14 If you find from your consideration of all of  
15 the evidence that each one of these propositions has  
16 been proved beyond a reasonable doubt, you should find  
17 the defendant guilty. If you find from your  
18 consideration of all of the evidence that any one of  
19 these propositions has not been proved beyond a  
20 reasonable doubt, you should find the defendant not  
21 guilty.  
22  
23  
24

Ex A2



1 To sustain the charge of aggravated  
2 kidnapping, the State must prove the following  
3 propositions.

4 First: That the defendant by force or threat  
5 of imminent force carried Isaiah Ostrowski from one  
6 place to another place; and

7 Second: That when the -- and that the  
8 defendant acted knowingly; and

9 Third: That when the defendant did so, he  
10 intended to secretly confine Isaiah Ostrowski against  
11 his will; and

12 Fourth: That Isaiah Ostrowski was a child  
13 under the age of 13 years who was confined without the  
14 consent of his parent or legal guardian.

15 If you find from your consideration of all of  
16 the evidence that each one of these propositions has  
17 been proved beyond a reasonable doubt, you should find  
18 the defendant guilty.

19 If you find from your consideration of all of  
20 the evidence that any one of these propositions has  
21 not been proved beyond a reasonable doubt, you should  
22 find the defendant not guilty.

1 hysterical.

2 Q While he was on the phone with his sister,  
3 did you have an opportunity to talk to his sister?

4 A Yes, I did.

5 Q Did you tell his sister what had happened?

6 A Not at that time.

7 Q Why not?

8 A Because I wanted to check on my kids.

9 Q Did he say anything to you before you  
10 talked to them?

11 A He told me not to tell her, say you're  
12 okay. I said okay, I'm okay.

13 Q Why did you do that?

14 A Because Miguel scares me, I'm scared of  
15 Miguel.

16 Q Were you scared of him when you were  
17 talking to his sister, Maria?

18 A Yes. I didn't know how his family was, if  
19 they would stick together or not, if they would be  
20 against me or not.

21 Q Later that same day, did you make a phone  
22 call to the detectives investigating this case?

23 A Yes.

24 Q Did you tell them anything?

A I told them I was fine.

Q Why did you tell them that?

A My children were in the car, in the car with Miguel. Miguel was trying to hurt me. On the phone, he said maybe they could trace him.

Q Let me back up for a second. When you made the call to the police to tell them you were okay, you were standing outside the car at the pay phone?

A Yes.

Q And Miguel was where, inside the car?

A Uh-hum.

Q And yes?

A Yes, with the kids.

Q And while you spoke to the police, what was this defendant doing in the car?

A Kind of driving slowly.

Q Was he driving away from the pay phone?

A A little bit.

Q Eventually, within the next couple of days, you left town with this defendant, is that right?

A Yes.

Q Where did you go with him?

A I went to Florida.

Q And how long did you stay with this

1 STATE OF ILLINOIS )  
 2 ) ss  
 3 COUNTY OF C O O K )

4 IN THE CIRCUIT COURT OF COOK COUNTY  
 COUNTY DEPARTMENT - CRIMINAL DIVISION

5 THE PEOPLE OF THE  
 6 STATE OF ILLINOIS )

7 vs. )

Case No. 01 CR 2646  
 Charge: ATT. MURDER

8 MIGUEL RIVERA )

9 REPORT OF PROCEEDINGS

10 BE IT REMEMBERED that on the 12th day of  
 11 December, 2001, this cause came on for hearing before  
 12 the Honorable EDWARD M. FIALA, Judge of said Court,  
 13 upon the indictment herein, the defendant having  
 entered a plea of not guilty.

14 APPEARANCES:

15 HON. RICHARD DEVINE,  
 16 State's Attorney of Cook County, by  
 17 MR. ARUNAS BUNTINAS,  
 18 MR. DANIEL TIERNAN,  
 Assistant State's Attorneys,  
 Appeared on behalf of the People;

19 MR. FRANK EDWARDS,  
 appeared on behalf of the Defendant.

20  
 21  
 22 Kenneth Madoch  
 23 Official Court Reporter  
 24 Circuit Court of Cook County  
 County Department-Criminal Division.

B 1

E4 B 1/4

MAUREEN MURPHY  
 FILED

JUN 04 2002

DOROTHY HOOVER  
 Clerk of Circuit Court

1 Q Did you ever see her on the phone?

2 A No.

3 MR. BUNTINAS: No further questions.

4 MR. EDWARDS: Nothing.

5 THE COURT: You may step down, sir.

6 (Witness excused.)

7 THE COURT: Call your next witness.

8 MR. TIERNAN: Yes.

9 THE COURT: We're going to hear one more  
10 witness and then going to break for lunch. Lunch  
11 arrangements have been made in your jury room for you.

12 THE CLERK: Raise your right hand

13 (Witness sworn).

14 THE CLERK: Please be seated. Keep your voice  
15 up so everyone can hear you.

16 MR. TIERNAN: May I proceed?

17 THE COURT: Please inquire.

18 MR. TIERNAN: Thank you.

19 HEATHER CARSON,  
20 called as a witness on behalf of the People of the  
21 State of Illinois, having been first duly sworn, was  
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 BY

1 hysterical.

2 Q While he was on the phone with his sister,  
3 did you have an opportunity to talk to his sister?

4 A Yes, I did.

5 Q Did you tell his sister what had happened?

6 A Not at that time.

7 Q Why not?

8 A Because I wanted to check on my kids.

9 Q Did he say anything to you before you  
10 talked to them?

11 A He told me not to tell her, say you're  
12 okay. I said okay, I'm okay.

13 Q Why did you do that?

14 A Because Miguel scares me, I'm scared of  
15 Miguel.

16 Q Were you scared of him when you were  
17 talking to his sister, Maria?

18 A Yes. I didn't know how his family was, if  
19 they would stick together or not, if they would be  
20 against me or not.

21 Q Later that same day, did you make a phone  
22 call to the detectives investigating this case?

23 A Yes.

24 Q Did you tell them anything?

A I told them I was fine.

Q Why did you tell them that?

A My children were in the car, in the car with Miguel. Miguel was trying to hurt me. On the phone, he said maybe they could trace him.

Q Let me back up for a second. When you made the call to the police to tell them you were okay, you were standing outside the car at the pay phone?

A Yes.

Q And Miguel was where, inside the car?

A Uh-hum.

Q And yes?

A Yes, with the kids.

Q And while you spoke to the police, what was this defendant doing in the car?

A Kind of driving slowly.

Q Was he driving away from the pay phone?

A A little bit.

Q Eventually, within the next couple of days, you left town with this defendant, is that right?

A Yes.

Q Where did you go with him?

A I went to Florida.

Q And how long did you stay with this

1 him. He is willing to come to court.

2 MR. EDWARDS: I spoke to Mr. Duffin  
3 previously. I spoke with him today. He indicated  
4 if he was called to testify, he would testify that  
5 Miss Carson in the apartment did not see a knife,  
6 which is consistent with her testimony on the  
7 stand when she says she saw the knife when  
8 Mr. Rivera threw it over the wall and he was  
9 leaving out of the apartment.

10 So, therefore, I believe his  
11 testimony would have not mitigated the charges  
12 against Mr. Rivera; so therefore, I didn't call  
13 him.

14 THE COURT: Is that the reason you would  
15 be calling the lawyer, sir?

16 THE DEFENDANT: Pardon me?

17 THE COURT: Is that the reason --

18 MR. EDWARDS: He wants Mr. Duffin to  
19 represent him.

20 THE DEFENDANT: No, no, no. I didn't say  
21 that. I said I want you to get my witness in. He  
22 has a right to be heard at trial. That's what I  
23 stipulated to you.

24 He told me the same day of trial,

EXHIBIT C

1/17/02 post-trial



1 To sustain the charge of aggravated  
2 kidnapping, the State must prove the following  
3 propositions:

4 First: That the defendant by force or threat  
5 of imminent force carried Heather Carson from one  
6 place to another place; and

7 Second: That the defendant acted knowingly;  
8 and

9 Third: That when the defendant did so, he  
10 intended to secretly confine Heather Carson against  
11 her will; and

12 Fourth: That the defendant was armed with a  
13 dangerous weapon.

14 If you find from your consideration of all of  
15 the evidence that each one of these propositions has  
16 been proved beyond a reasonable doubt, you should find  
17 the defendant guilty.

18 If you find from your consideration of all  
19 the evidence that any one of these propositions has  
20 not been proved beyond a reasonable doubt, you should  
21 find the defendant not guilty.

22  
23  
24  
Ex A.

1 To sustain the charge of aggravated  
2 kidnapping, the State must prove the following  
3 propositions.

4 First: That the defendant by force or threat  
5 of imminent force carried Nicholas Carson from one  
6 place to another place; and

7 Second: That the defendant acted knowingly;  
8 and

9 Third: That when the defendant did so, he  
10 intended to secretly confine Nicholas Carson against  
11 his will; and

12 Fourth: That the defendant was armed with a  
13 dangerous weapon.

14 If you find from your consideration of all of  
15 the evidence that each one of these propositions has  
16 been proved beyond a reasonable doubt, you should find  
17 the defendant guilty. If you find from your  
18 consideration of all of the evidence that any one of  
19 these propositions has not been proved beyond a  
20 reasonable doubt, you should find the defendant not  
21 guilty.

22  
23  
24  
Ex A2

1 To sustain the charge of aggravated  
2 kidnapping, the State must prove the following  
3 propositions.

4 First: That the defendant by force or threat  
5 of imminent force carried Isaiah Ostrowski from one  
6 place to another place; and

7 Second: That when the -- and that the  
8 defendant acted knowingly; and

9 Third: That when the defendant did so, he  
10 intended to secretly confine Isaiah Ostrowski against  
11 his will; and

12 Fourth: That Isaiah Ostrowski was a child  
13 under the age of 13 years who was confined without the  
14 consent of his parent or legal guardian.

15 If you find from your consideration of all of  
16 the evidence that each one of these propositions has  
17 been proved beyond a reasonable doubt, you should find  
18 the defendant guilty.

19 If you find from your consideration of all of  
20 the evidence that any one of these propositions has  
21 not been proved beyond a reasonable doubt, you should  
22 find the defendant not guilty.

What constitutes kidnapping, the <sup>initial</sup> act itself or  
the entire length they were gone?

Ricardo R. Rios  
Treferson

Please rely upon the  
EVIDENCE & INSTRUCTIONS  
YOU HAVE RECEIVED. JUDGE FLORES



office of the  
**COOK COUNTY PUBLIC DEFENDER**

69 WEST WASHINGTON • 15TH FLOOR • CHICAGO, IL 60602 • (312) 603-0600

Rita A. Fry • Public Defender

July 17, 2002

Mr. Miguel Rivera  
Reg. No. N-23881  
711 Kaskaskia Street  
Menard, IL 62259

Re: Appeal No. 02-0699

Dear Mr. Rivera:

I have been assigned to represent you in the appeal of your conviction. If there are arguably meritorious issues, I will file your brief in the next three months.

Because the appellate process takes time, I want to take this opportunity to briefly explain how the process works. The first part of the process is the briefing process. I will read the complete transcript of your trial, determine which issues can be raised on appeal, research those issues and write a brief based on my research. A brief is a legal document stating why the Appellate Court should change the trial court's decision in one of three ways: 1) grant a sentence reduction; 2) order a new trial; or 3) vacate the conviction. What action the Appellate Court decides to take depends on the specific facts of each case, however, please be advised that once you have been convicted, the Appellate Court rarely changes the trial court's decision.

After our brief is filed, the State's Attorney will get a chance to write a brief in response to our brief. They are required to file their brief within 35 days after receiving our brief, but it normally takes them 3 to 9 months to respond. After their brief is filed, we have 14 days to respond to their arguments, if necessary. Once we file a reply brief the briefing process is complete.



The case then goes before three Appellate Court justices. The justices can decide the case based solely on the briefs and the transcript of the trial or they can request that the attorneys argue their position before them. This is called an oral argument. The Appellate Court does not grant oral argument on every case. If they do request an oral argument on your case, you will of course be notified. However, your presence is not required and will not be allowed if you are in custody.

After the judges receive all the briefs and, if requested, hear oral argument, it usually takes them 3 to 9 months to come to a decision. Again, as soon as a decision has been reached in your case, you will be notified.

Thus, the appeal process can take a year or longer and it will be quite sometime before a decision is made by the Appellate Court regarding your case. If you have any questions or information on your case, feel free to contact me.

Sincerely,



TODD AVERY SHANKER  
Assistant Public Defender

Exhibit-I #9.

PHU1 DTE:03/18/02 SSN:338-30-7020 DOC:485 UNIT:PAJ PG: 001+  
 STATUS MBR YES PHUS YES LOU-03/18 DATA FILES YES LOU-03/18  
 SSACCS NO LOU-03/15

ACCOUNT PCOC-4 NOB-04 BICS-C1 C2 C3 D

PERSON BIC-C1 NAME-MIGUEL RIVERA BOAN-343-66-9711  
 MBR FDS DOC-670 CAD-10/02/00  
 PAYEE- MIGUEL RIVERA  
 ADDRESS-602 SE 13 ST CAPE CORAL FL33990-2130  
 LAF-S6 RFST-PRISON NAME-MIGUEL RIVERA DOB-10/28/1964 DOEC-10/82  
 ABN-4JBK DOEI-10/75 DOST-02/02 SMI START-09/00 BSPC-U/P  
 BSPA-\$164.00 BOAN-343-66-9711 MBC-\$164.00 PCI-1

Social Security checks  
 Suspended. last 3  
 checks 12/01 - 2/02  
 have been returned  
 due to incarceration.

INDCTR RETURN TO MBR-02/02 RT-Y  
 PNAD MIGUEL RIVERA 602 SE 13 ST  
 CAPE CORAL FL 33990-2130

+++BIC-C1 TY-01+++

TRANS RPD-02/06/01 COM-02/01 SSC-B MADCAP  
 EVNT-014 RECUR PMT AMT-\$ 155.00 ETD-11/00 THRU 12/00 (02)  
 EVNT-014 RECUR PMT AMT-\$ 160.00 ETD-01/01 THRU 02/01 (02)  
 EVNT-044 RCMA CHK AMT-\$ 160.00 ETD-03/01

TRANS RPD-03/22/01 COM-03/01 SSC-Z2 RETURNED CHECK  
 EVNT-009 RET CHECK AMT-\$ 160.00 ETD-03/01  
 RT DISS-03/02/01 RT TOPC-1 RT NO-13854489 RT REA-AD TCTS-3092

TRANS RPD-12/05/01 COM-12/01 SSC-Z5 RCREACT RECERTIFICATION  
 EVNT-014 RECUR PMT AMT-\$ 160.00 NULL ETD-04/01 THRU 07/01 (04)  
 EVNT-014 RECUR PMT AMT-\$ 160.00 NULL ETD-08/01 THRU 11/01 (04)  
 EVNT-069 NONRECEIPT \*\*INFORMATIONAL\*\* SSAID-01/03/01 TOA-C TOPC-1  
 RFCD RPD-12/10/01 RFCD-K CHK-\$ 160.00 TDDC-01 TCTN-08683077  
 TCTS-3092 LTPD-12/05/01  
 DDP RPD-12/11/01 TDSC-31 TFC-2  
 EVNT-069 NONRECEIPT \*\*INFORMATIONAL\*\* SSAID-02/02/01 TOA-C TOPC-1  
 RFCD RPD-12/10/01 RFCD-K CHK-\$ 160.00 TDDC-01 TCTN-11278884  
 TCTS-3092 LTPD-12/05/01  
 DDP RPD-12/11/01 TDSC-31 TFC-2

TRANS RPD-12/06/01 COM-12/01 SSC-JB RET CHK-REINST  
 EVNT-014 RECUR PMT AMT-\$ 160.00 NULL ETD-12/01  
 EVNT-042 PMA CHK AMT-\$ 1600.00 ETD-12/01  
 EVNT-044 RCMA CHK AMT-\$ 164.00 ETD-01/02

STM TOT BENEFITS FOR 2001-\$ 2080.00 (BOX 3)  
 ADD: DIRECT PAY-----\$ 2080.00

BENEFITS REPAID TO SSA IN 2001-\$ 160.00 (BOX 4)  
 ADD: RETURN CHK-----\$ 160.00

+++NET BENEFITS FOR 2001-\$ 1920.00  
 +++ (BOX 5=BOX 3 MINUS BOX 4)

+++BIC-C1 TY-02+++

TRANS RPD-12/06/01 COM-12/01 SSC-JB RET CHK-REINST  
 EVNT-014 RECUR PMT AMT-\$ 160.00 NULL ETD-12/01  
 EVNT-042 PMA CHK AMT-\$ 1600.00 ETD-12/01  
 EVNT-044 RCMA CHK AMT-\$ 164.00 ETD-01/02

TRANS RPD-01/11/02 COM-01/02 SSC-Z2 RETURNED CHECK  
 EVNT-009 RET CHECK AMT-\$ 1600.00 ETD-01/02  
 RT DISS-12/07/01 RT TOPC-2 RT NO-54908217 RT REA-AD TCTS-3091  
 EVNT-009 RET CHECK AMT-\$ 160.00 NULL ETD-01/02



File Date: 7-7-2008

Case No: 08cv3848

ATTACHMENT # Exhibits part 2

EXHIBIT \_\_\_\_\_

TAB (DESCRIPTION)

\_\_\_\_\_

• TRANS RPD-01/14/02 COM-01/02 SSC-Z2 RETURNED CHECK  
EVNT-009 RET CHECK AMT-\$ 160.00 NULL ETD-01/02  
RT DISS-12/07/01 RT TOPC-9 RT NO-99915131 RT REA-DC TCTS-3084

TRANS RPD-02/11/02 COM-02/02 SSC-Z2 RETURNED CHECK  
EVNT-009 RET CHECK AMT-\$ 164.00 ETD-02/02  
RT DISS-01/03/02 RT TOPC-1 RT NO-41151082 RT REA-AD TCTS-3092

MBR PMT EVNT-014 RECUR PMT AMT-\$ 164.00 ETD-02/02  
STM TOT BENEFITS FOR 2002-\$ 328.00 (BOX 3)

ADD: DIRECT PAY-----\$ 328.00

BENEFITS REPAID TO SSA IN 2002-\$ 1764.00 (BOX 4)

ADD: RETURN CHK-----\$ 1764.00

+++NET BENEFITS FOR 2002-\$ 1436.00

NEG+++ (BOX 5=BOX 3 MINUS BOX 4)

\*\*\* REC 2002077 095635 HA8217E0 ANSF CIPQYA4 PQT (F-ANS) \*\*\*

TPQY DTE:03/18/02 SSN:343-66-9711 DOC:485 UNIT:PAJ PG: 001  
 STATUS MBR YES LOU-03/18 SSACCS NO LOU-03/15 SSR YES LOU-10/23/97  
 INPUT SOCIAL SECURITY NUMBER 343-66-9711 NAME M RIVER USER CODE PAJ  
 TPQY CONFIDENTIAL SOCIAL SECURITY DATA - CLAIM NUMBER 343-66-9711A  
 INDIVIDUALS OWN SOCIAL SECURITY NUMBER: 343-66-9711

MIGUEL RIVERA MALE BORN:10/28/64

MIGUEL RIVERA 2404 W LYNDAL CHICAGO IL 60647

PAYMENT STATUS CODE: N -BENEFITS DISALLOWED OR DENIED

NET MONTHLY BENEFIT IF PAYABLE: \$0.00

INPUT SOCIAL SECURITY NUMBER 343-66-9711 NAME M RIVER USER CODE PAJ

TPQY CONFIDENTIAL SUPPLEMENTAL SECURITY INCOME DATA ON 343-66-9711

MIGUEL RIVERA MALE BORN:10/28/64 ELIGIBLE:09/1997

APPLICATION DATE: 09/22/1997 TYPE OF PERSON: DISABLED INDIVIDUAL

MAILING ADDRESS:

MIGUEL RIVERA COOK COUNTY DEPARTMENT OF CORRECTIONS

DV 5 ADMINISTRATION 2700 S CALIFORNIA CHICAGO IL 60608

RESIDENCE:

2700 S CALIFORNIA AVE CHICAGO IL 60608

NET CURRENT BENEFIT FOR 03/01/2002 - FED AMT: \$0.00 STATE AMT: \$0.00

PAYMENT HISTORY OF NET BENEFITS PAID:

DATE:	FEDERAL AMT:	STATE AMT:	TYPE OF PAYMENT:
01/01/2002	\$ 0.00	\$ 0.00	NONE MADE
04/01/2001	\$ 0.00	\$ 0.00	NONE MADE
03/01/2001	\$ 365.00	\$ 0.00	RETURNED
03/01/2001	\$ 25.00	\$ 0.00	OVERPAYMENT RECOVERY

PAYMENT STATUS CODE: T31 - TERMINATED BY SYSTEMS ACTION EFFECTIVE 05/2002

DISABLED

INPUT SOCIAL SECURITY NUMBER 343-66-9711 NAME M RIVER USER CODE PAJ

\*\*\*INFORMATION\*\*\*

\*\*\*D O REVIEW REQUIRED\*\*\*

ENTITLEMENT DISCREPANCY BETWEEN MBR & SSR:

PERSONS MBR CAN/BIC DISCREPANT

--SSR REFERENCES MBR CAN: 338-30-7020C1

SSI  
 terminated  
 no pmts  
 since  
 2/01

TRANS RPD-01/14/02 COM-01/02 SSC-Z2 RETURNED CHECK  
EVNT-009 RET CHECK AMT-\$ 160.00 NULL ETD-01/02  
RT DISS-12/07/01 RT TOPC-9 RT NO-99915131 RT REA-DC TCTS-3084

TRANS RPD-02/11/02 COM-02/02 SSC-Z2 RETURNED CHECK  
EVNT-009 RET CHECK AMT-\$ 164.00 ETD-02/02  
RT DISS-01/03/02 RT TOPC-1 RT NO-41151082 RT REA-AD TCTS-3092

MBR PMT EVNT-014 RECUR PMT AMT-\$ 164.00 ETD-02/02  
STM TOT BENEFITS FOR 2002-\$ 328.00 (BOX 3)  
ADD: DIRECT PAY-----\$ 328.00

BENEFITS REPAID TO SSA IN 2002-\$ 1764.00 (BOX 4)  
ADD: RETURN CHK-----\$ 1764.00

+++NET BENEFITS FOR 2002-\$ 1436.00  
NEG+++ (BOX 5=BOX 3 MINUS BOX 4)

\*\*\* REC 2002077 0956 HA8217E0 ANSF CIPQYA4 14 (F-ANS ) \*\*\*

TPQY DTE:03/18/02 SSN:343-66-9711 DOC:485 UNIT:PAJ PG: 001  
 STATUS MBR YES LOU-03/18 SSACCS NO LOU-03/15 SSR YES LOU-10/23/97  
 INPUT SOCIAL SECURITY NUMBER 343-66-9711 NAME M RIVER USER CODE PAJ  
 TPQY CONFIDENTIAL SOCIAL SECURITY DATA - CLAIM NUMBER 343-66-9711A  
 INDIVIDUALS OWN SOCIAL SECURITY NUMBER: 343-66-9711

MIGUEL RIVERA MALE BORN:10/28/64

MIGUEL RIVERA 2404 W LYNDAL CHICAGO IL 60647

PAYMENT STATUS CODE: N -BENEFITS DISALLOWED OR DENIED

NET MONTHLY BENEFIT IF PAYABLE: \$0.00

INPUT SOCIAL SECURITY NUMBER 343-66-9711 NAME M RIVER USER CODE PAJ

TPQY CONFIDENTIAL SUPPLEMENTAL SECURITY INCOME DATA ON 343-66-9711

MIGUEL RIVERA MALE BORN:10/28/64 ELIGIBLE:09/1997

APPLICATION DATE: 09/22/1997 TYPE OF PERSON: DISABLED INDIVIDUAL

MAILING ADDRESS:

MIGUEL RIVERA COOK COUNTY DEPARTMENT OF CORRECTIONS

DV 5 ADMINISTRATION 2700 S CALIFORNIA CHICAGO IL 60608

RESIDENCE:

2700 S CALIFORNIA AVE CHICAGO IL 60608

NET CURRENT BENEFIT FOR 03/01/2002 - FED AMT: \$0.00 STATE AMT: \$0.00

PAYMENT HISTORY OF NET BENEFITS PAID:

DATE:	FEDERAL AMT:	STATE AMT:	TYPE OF PAYMENT:
01/01/2002	\$ 0.00	\$ 0.00	NONE MADE
04/01/2001	\$ 0.00	\$ 0.00	NONE MADE
03/01/2001	\$ 365.00	\$ 0.00	RETURNED
03/01/2001	\$ 25.00	\$ 0.00	OVERPAYMENT RECOVERY

PAYMENT STATUS CODE: T31 - TERMINATED BY SYSTEMS ACTION EFFECTIVE 05/2002  
 DISABLED

INPUT SOCIAL SECURITY NUMBER 343-66-9711 NAME M RIVER USER CODE PAJ

\*\*\*INFORMATION\*\*\*

\*\*\*D O REVIEW REQUIRED\*\*\*

ENTITLEMENT DISCREPANCY BETWEEN MBR & SSR:

PERSONS MBR CAN/BIC DISCREPANT

--SSR REFERENCES MBR CAN: 338-30-7020C1

SSI

terminated  
no pmt  
since  
2/01



Form 1040 (2000)

RIVERA #N-23881 343-66-9711 C 0812

Page 2

<b>Tax and Credits</b>	<b>34</b>	Amount from line 33 (adjusted gross income) .....	<b>34</b>	3,495
	<b>35a</b>	Check if: <input type="checkbox"/> You were 65/older, <input type="checkbox"/> Blind; <input type="checkbox"/> Spouse was 65 or older, <input type="checkbox"/> Blind. Add the number of boxes checked above and enter the total here .....	<b>35a</b>	
	<b>b</b>	If you are married filing separately and your spouse itemizes deductions, or you were a dual-status alien, see instructions and check here .....	<b>35b</b>	<input type="checkbox"/>
<b>Standard Deduction for Most People</b>	<b>36</b>	Enter your <b>itemized deductions</b> from Schedule A, line 28, or <b>standard deduction</b> shown on the left. But see instructions to find your standard deduction if you checked any box on line 35a or 35b or if someone can claim you as a dependent .....	<b>36</b>	4,400
Single: \$4,400	<b>37</b>	Subtract line 36 from line 34. ....	<b>37</b>	-905
Head of household: \$6,450	<b>38</b>	If line 34 is \$96,700 or less, multiply \$2,800 by the total number of exemptions claimed on line 6d. If line 34 is over \$96,700, see the worksheet in the instructions for the amount to enter .....	<b>38</b>	2,800
Married filing jointly or Qualifying widow(er): \$7,350	<b>39</b>	<b>Taxable income.</b> Subtract line 38 from line 37. If line 38 is more than line 37, enter -0- .....	<b>39</b>	0
Married filing separately: \$3,675	<b>40</b>	<b>Tax</b> (see Inst.). Check if any tax is from <b>a</b> <input type="checkbox"/> Form(s) 9814 <b>b</b> <input type="checkbox"/> Form 4972 .....	<b>40</b>	0
	<b>41</b>	Alternative minimum tax. Attach Form 6251 .....	<b>41</b>	
	<b>42</b>	Add lines 40 and 41. ....	<b>42</b>	
	<b>43</b>	Foreign tax credit. Attach Form 1116 if required. ....	<b>43</b>	
	<b>44</b>	Credit for child & dependent care expenses. Attach Form 2441 .....	<b>44</b>	
	<b>45</b>	Credit for the elderly or the disabled. Attach Schedule R. ....	<b>45</b>	
	<b>46</b>	Education credits. Attach Form 8863 .....	<b>46</b>	
	<b>47</b>	Child tax credit (see instructions) .....	<b>47</b>	
	<b>48</b>	Adoption credit. Attach Form 8839 .....	<b>48</b>	
	<b>49</b>	Other. Check if from <b>a</b> <input type="checkbox"/> Form 3800 <b>b</b> <input type="checkbox"/> Form 8396 <b>c</b> <input type="checkbox"/> Form 8801 <b>d</b> <input type="checkbox"/> Form .....	<b>49</b>	
	<b>50</b>	Add lines 43 through 49. These are your <b>total credits</b> . ....	<b>50</b>	
	<b>51</b>	Subtract line 50 from line 42. If line 50 is more than line 42, enter -0- .....	<b>51</b>	0
<b>Other Taxes</b>	<b>52</b>	Self-employment tax. Attach Schedule SE. ....	<b>52</b>	
	<b>53</b>	Social security and Medicare tax on tip income not reported to employer. Attach Form 4137 ..	<b>53</b>	
	<b>54</b>	Tax on IRAs, other retirement plans, and MSAs. Attach Form 5329 if required. ....	<b>54</b>	
	<b>55</b>	Advance earned income credit payments from Form(s) W-2. ....	<b>55</b>	
	<b>56</b>	Household employment taxes. Attach Schedule H. ....	<b>56</b>	
	<b>57</b>	Add lines 51 through 56. This is your <b>total tax</b> . ....	<b>57</b>	0
<b>Payments</b>	<b>58</b>	Federal income tax withheld from Forms W-2 and 1099 .....	<b>58</b>	302
	<b>59</b>	2000 estimated tax payments & amt. applied from 1999 return .....	<b>59</b>	
If you have a qualifying child, attach Schedule EIC.	<b>60a</b>	<b>Earned income credit (EIC)</b> .....	<b>60a</b>	
	<b>b</b>	Nontaxable earned income: amt. ▶ & type ▶ .....		
<b>0 104012</b>	<b>61</b>	Excess social security and RRTA tax withheld (see instructions) .....	<b>61</b>	
NTF 31768	<b>62</b>	Additional child tax credit. Attach Form 8812 .....	<b>62</b>	
Copyright 2000	<b>63</b>	Amount paid with request for extension to file (see instructions) .....	<b>63</b>	
Greatland/Neico	<b>64</b>	Other payments. Check if from <b>a</b> <input type="checkbox"/> Form 2439 <b>b</b> <input type="checkbox"/> Form 4139 .....	<b>64</b>	
LP - Forms	<b>65</b>	Add lines 58, 59, 60a, and 61 through 64. These are your <b>total payments</b> .....	<b>65</b>	302
Software Only	<b>66</b>	If line 65 is more than line 57, subtract line 57 from line 65. This is the amount you <b>overpaid</b> ..	<b>66</b>	302
<b>Refund</b>	<b>67a</b>	Amount of line 66 you want <b>refunded to you</b> .....	<b>67a</b>	302
Have it directly deposited! See Inst. and fill in 67b, 67c, and 67d.	<b>b</b>	Routing no. ▶ <b>c</b> Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings		
	<b>d</b>	Account no. ▶		
<b>Amount You Owe</b>	<b>68</b>	Amt. of line 66 you want <b>applied to your 2001 estimated tax</b> ▶	<b>68</b>	
	<b>69</b>	If line 57 is more than line 65, subtract line 65 from line 57. This is the <b>amount you owe</b> . For details on how to pay, see instructions .....	<b>69</b>	
	<b>70</b>	Estimated tax penalty. Also include on line 69 .....	<b>70</b>	

<b>Sign Here</b>	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.		
Joint return? See instructions. Keep a copy for your records.	Your signature <i>Miguel Rivera</i>	Date 3/20/03	Your occupation Daytime phone number
	Spouse's signature. If joint return, both must sign.	Date	Spouse's occupation
	May IRS discuss this return with preparer shown below (see Inst.)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		

**Paid Preparer's Use Only**

Preparer's signature <i>Michael R. Francis CPA</i>	Date 3/20/03	Check if self-employed <input type="checkbox"/>	Preparer's SSN or PTIN P00-11-9162
Firm's name (or yours if self-employed), address, & ZIP code FRANCIS AND COMPANY, PC 440 W 194TH ST GLENWOOD IL 60425	EIN 36-3730194	Phone no. 708-754-4271	

**WAGES AND SALARIES SUMMARY**

MIGUEL RIVERA #N-23881

343-66-9711

Employer Name	Taxpayer or Spouse	Wages	Federal Withholding	Social Security Tax Withheld	State Tax Withheld	Local Tax Withheld
CITY TRANSFER	T	540	65	33		
DYNASTAFF CORP	T	660	83	41		
HAWORTH CONSTRU	T	2,295	154	142		
TOTAL		3,495	302	216		



**SOCIAL SECURITY BENEFITS WORKSHEET - Lines 20a and 20b**

MIGUEL RIVERA #N-23881

343-66-9711

(Keep for Your Records)

**Before you start:** Is your filing status **Married filing separately?****No.** Go to line 1 below.**Yes.** Did you live apart from your spouse all year?**No.** Go to line 1 below.**Yes.** Do the following if you file:**Form 1040:** Enter "D" to the left of line 20a, then go to line 1 below.**Form 1040A:** Enter "D" to the right of the word "benefits" on line 14a, then go to line 1 below.

- |   |                  |
|---|------------------|
| 1. Enter the total amount from box 5 of ALL your Forms SSA-1099 and RRB-1099 .....  | 1. <u>2,015</u>  |
| <b>Note:</b> If line 1 is zero or less, stop here; none of your benefits are taxable. Otherwise, go on to line 2.   |                  |
| 2. Enter one-half of line 1 .....   | 2. <u>1,008</u>  |
| 3. Enter the total of the amounts from:<br><b>Form 1040:</b> Lines 7, 8a, 8b, 9-14, 15b, 16b, 17-19, and 21.<br><b>Form 1040A:</b> Lines 7, 8a, 8b, 9, 10, 11b, 12b, and 13 .....   | 3. <u>3,495</u>  |
| 4. <b>Form 1040A filers:</b> Enter the total of any exclusions for qualified U.S. savings bond interest (Form 8815, line 14) or for adoption benefits (Form 8839, line 26)<br><b>Form 1040 filers:</b> Enter the total of any exclusions/adjustments for:   |                  |
| • Qualified U.S. savings bond interest (Form 8815, line 14)   |                  |
| • Adoption benefits (Form 8839, line 26)  |                  |
| • Foreign earned income or housing (Form 2555, lines 43 and 48, or Form 2555-EZ, line 18), and  |                  |
| • Certain income of bona fide residents of American Samoa (Form 4563, line 15) or Puerto Rico .....   |                  |
| 5. Add lines 2, 3, and 4 .....  | 4. <u>4,503</u>  |
| 6. <b>Form 1040A filers:</b> Enter the amount from Form 1040A, line 16. <b>Form 1040 filers:</b> Enter the amount from Form 1040, line 32, minus any amount on Form 1040, line 24 .....   | 6. <u>4,503</u>  |
| 7. Subtract line 6 from line 5 .....  | 7. <u>4,503</u>  |
| 8. Enter \$25,000 (\$32,000 if married filing jointly; \$0 if married filing separately and you lived with your spouse at any time during 2000) .....   | 8. <u>25,000</u> |
| 9. Subtract line 8 from line 7. If zero or less, enter -0- .....  | 9. <u></u>       |
| <b>Note:</b> If line 9 is zero or less, stop here; none of your benefits are taxable. (Do not enter any amounts on Form 1040, line 20a or 20b, or on Form 1040A, line 14a or line 14b. But if you are married filing separately and you lived apart from your spouse for all of 2000, enter -0- on Form 1040, line 20b, or on Form 1040A, line 14b.) Otherwise, go on to line 10. |                  |
| 10. Enter: \$9,000 (\$12,000 if married filing jointly; \$0 if married filing separately and you lived with your spouse at any time during 2000) .....  | 10. <u></u>      |
| 11. Subtract line 10 from line 9. If zero or less, enter -0- .....  | 11. <u></u>      |
| 12. Enter the <b>smaller</b> of line 9 or line 10 .....   | 12. <u></u>      |
| 13. Enter one-half of line 12 .....   | 13. <u></u>      |
| 14. Enter the <b>smaller</b> of line 2 or line 13 .....   | 14. <u></u>      |
| 15. Multiply line 11 by 85% (.85). If line 11 is zero, enter -0- .....  | 15. <u></u>      |
| 16. Add lines 14 and 15 .....   | 16. <u></u>      |
| 17. Multiply line 1 by 85% (.85) .....  | 17. <u></u>      |
| 18. <b>Taxable social security benefits.</b> Enter the <b>smaller</b> of line 16 or line 17 .....   | 18. <u></u>      |

• Enter the amount from line 1 above on Form 1040, line 20a, or on Form 1040A, line 14a.

• Enter the amount from line 18 above on Form 1040, line 20b, or on Form 1040A, line 14b.

**Note:** If part of your benefits are taxable for 2000 AND they include benefits paid in 2000 that were for an earlier year, you may be able to reduce the taxable amount. See Pub. 915 for details.

EXHIBIT-J #10.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 001

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 01CR0264601

MIGUEL

RIVERA

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION with the Clerk of the Circuit Court.

Charging the above named defendant with:

*Jury said NO ATT/IN/IN*

720-5/9-1(A) (1)	F	-(ATT) MURDER/INTENT TO KILL/INJ
720-5/12-11(A) (1)	F	- HOME INVASION/ARMED/FORCE
720-5/12-11(A) (2)	F	- HOME INVASION/CAUSE INJUR
720-5/10-2(A) (3)	F	- AGG KIDNAPING/INFLECT HAR
720-5/10-2(A) (3)	F	- AGG KIDNAPING/INFLECT HAR
720-5/10-2(A) (3)	F	- AGG KIDNAPING/INFLECT HAR
720-5/10-2(A) (3)	F	- AGG KIDNAPING/INFLECT HAR
720-5/10-2(A) (5)	F	- AGGRAVATED KIDNAPING/ARME
720-5/10-2(A) (5)	F	- AGGRAVATED KIDNAPING/ARME
720-5/10-2(A) (5)	F	- AGGRAVATED KIDNAPING/ARME
720-5/10-2(A) (5)	F	- AGGRAVATED KIDNAPING/ARME
720-5/10-2(A) (5)	F	- AGGRAVATED KIDNAPING/ARME
720-5/10-2(A) (5)	F	- AGGRAVATED KIDNAPING/ARME
720-5/12-4(B) (1)	F	- AGG BATTERY/WEAPON/NO FIR
720-5/12-4(A)	F	- AGG BATTERY/GREAT BODILY

The following disposition(s) was/were rendered before the Honorable Judge(s):

02/02/01 IND/INFO-CLK OFFICE-PRES JUDGE	02/15/01 1701
01CR0264601 ID# CR100110412	
02/15/01 CASE ASSIGNED	02/15/01 1727
BIEBEL, PAUL JR.	
02/15/01 DEFENDANT IN CUSTODY	00/00/00
FIALA JR., EDWARD M.	
02/15/01 PRISONER DATA SHEET TO ISSUE	00/00/00
FIALA JR., EDWARD M.	
02/15/01 DEFENDANT ARRAIGNED	00/00/00
FIALA JR., EDWARD M.	
02/15/01 PLEA OF NOT GUILTY	00/00/00
FIALA JR., EDWARD M.	
02/15/01 MOTION FOR DISCOVERY	00/00/00 F 1
FIALA JR., EDWARD M.	
02/15/01 DISCOVERY ANSWER FILED	00/00/00 1
FIALA JR., EDWARD M.	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 01CR0264601

MIGUEL

RIVERA

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

02/15/01 ADMONISH AS TO TRIAL IN ABSENT	00/00/00	
FIALA JR., EDWARD M.		
02/15/01 CONTINUANCE BY AGREEMENT	03/15/01	
FIALA JR., EDWARD M.		
03/15/01 DEFENDANT IN CUSTODY	00/00/00	
LACY, WILLIAM G.		
03/15/01 PRISONER DATA SHEET TO ISSUE	00/00/00	
LACY, WILLIAM G.		
03/15/01 CONTINUANCE BY AGREEMENT	04/17/01	
LACY, WILLIAM G.		
04/17/01 DEFENDANT IN CUSTODY	00/00/00	
FIALA JR., EDWARD M.		
04/17/01 PRISONER DATA SHEET TO ISSUE	00/00/00	
FIALA JR., EDWARD M.		
04/17/01 SPECIAL ORDER	00/00/00	
MOTION FOR APPOINTED COUNSEL THAN A PUBLIC DEF NDER DENIED.		
FIALA JR., EDWARD M.		
04/17/01 MOTION DEFT - CONTINUANCE - MD	05/01/01	
FIALA JR., EDWARD M.		
05/01/01 DEFENDANT IN CUSTODY	00/00/00	
FIALA JR., EDWARD M.		
05/01/01 PRISONER DATA SHEET TO ISSUE	00/00/00	
FIALA JR., EDWARD M.		
05/01/01 MOTION FOR DISCOVERY	00/00/00	F 1
FIALA JR., EDWARD M.		
05/01/01 CONTINUANCE BY AGREEMENT	06/13/01	
FIALA JR., EDWARD M.		
06/13/01 DEFENDANT IN CUSTODY	00/00/00	
FIALA JR., EDWARD M.		
06/13/01 PRISONER DATA SHEET TO ISSUE	00/00/00	
FIALA JR., EDWARD M.		
06/13/01 MOTION TO WITHDRAW AS ATTORNEY	00/00/00	
FIALA JR., EDWARD M.		
06/13/01 MOTION DEFT - CONTINUANCE - MD	07/15/01	
FIALA JR., EDWARD M.		
07/05/01 DEFENDANT IN CUSTODY	00/00/00	
FIALA JR., EDWARD M.		

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 01CR0264601

MIGUEL

RIVERA

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

07/05/01 PRISONER DATA SHEET TO ISSUE 00/00/00

FIALA JR., EDWARD M.

07/05/01 APPEARANCE FILED 00/00/00

FIALA JR., EDWARD M.

07/05/01 CONTINUANCE BY AGREEMENT 07/11/01

FIALA JR., EDWARD M.

07/11/01 DEFENDANT IN CUSTODY 00/00/00

FIALA JR., EDWARD M.

07/11/01 PRISONER DATA SHEET TO ISSUE 00/00/00

FIALA JR., EDWARD M.

07/11/01 CONTINUANCE BY AGREEMENT 08/07/01

FIALA JR., EDWARD M.

08/07/01 DEFENDANT IN CUSTODY 00/00/00

FIALA JR., EDWARD M.

08/07/01 PRISONER DATA SHEET TO ISSUE 00/00/00

FIALA JR., EDWARD M.

08/07/01 CONTINUANCE BY AGREEMENT 08/30/01

FIALA JR., EDWARD M.

08/30/01 DEFENDANT IN CUSTODY 00/00/00

FIALA JR., EDWARD M.

08/30/01 PRISONER DATA SHEET TO ISSUE 00/00/00

FIALA JR., EDWARD M.

08/30/01 CONTINUANCE BY AGREEMENT 09/17/01

FIALA JR., EDWARD M.

09/17/01 DEFENDANT IN CUSTODY 00/00/00

FIALA JR., EDWARD M.

09/17/01 PRISONER DATA SHEET TO ISSUE 00/00/00

FIALA JR., EDWARD M.

09/17/01 CHANGE PRIORITY STATUS R 00/00/00

FIALA JR., EDWARD M.

09/17/01 CONTINUANCE BY AGREEMENT 11/05/01

FIALA JR., EDWARD M.

11/05/01 DEFENDANT IN CUSTODY 00/00/00

FIALA JR., EDWARD M.

11/05/01 PRISONER DATA SHEET TO ISSUE 00/00/00

FIALA JR., EDWARD M.

11/05/01 WITNESSES ORDERED TO APPEAR 00/00/00

FIALA JR., EDWARD M.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 004

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 01CR0264601

MIGUEL

RIVERA

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

11/05/01 CONTINUANCE BY AGREEMENT 12/03/01

FIALA JR., EDWARD M.

12/03/01 DEFENDANT IN CUSTODY 00/00/00

FIALA JR., EDWARD M.

12/03/01 PRISONER DATA SHEET TO ISSUE 00/00/00

FIALA JR., EDWARD M.

12/03/01 DEF DEMAND FOR TRIAL 00/00/00

FIALA JR., EDWARD M.

12/03/01 MOTION STATE - CONTINUANCE -MS 12/11/01

FIALA JR., EDWARD M.

12/11/01 DEFENDANT IN CUSTODY 00/00/00

FIALA JR., EDWARD M.

12/11/01 PRISONER DATA SHEET TO ISSUE 00/00/00

FIALA JR., EDWARD M.

12/11/01 TRIAL COMENCED AND CONTINUED 12/12/01

FIALA JR., EDWARD M.

12/12/01 PRISONER DATA SHEET TO ISSUE 00/00/00

FIALA JR., EDWARD M.

12/12/01 DEFENDANT IN CUSTODY 00/00/00

FIALA JR., EDWARD M.

12/12/01 TRIAL COMENCED AND CONTINUED 12/13/01

FIALA JR., EDWARD M.

12/13/01 VERDICT OF NOT GUILTY C001 00/00/00

FIALA JR., EDWARD M.

12/13/01 VERDICT OF GUILTY C007 00/00/00

FIALA JR., EDWARD M.

12/13/01 VERDICT OF GUILTY C008 00/00/00

FIALA JR., EDWARD M.

12/13/01 VERDICT OF GUILTY C009 00/00/00

FIALA JR., EDWARD M.

12/13/01 VERDICT OF GUILTY C014 00/00/00

FIALA JR., EDWARD M.

12/13/01 PRE-SENT INVEST. ORD, CONTD TO 00/00/00

FIALA JR., EDWARD M.

12/13/01 BAIL REVOKED 00/00/00

FIALA JR., EDWARD M.

12/13/01 PROPERTY RECOVERED - RETURN 00/00/00

FIALA JR., EDWARD M.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 01CR0264601

MIGUEL

RIVERA

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION	
12/13/01 CONTINUANCE BY AGREEMENT	01/15/02
FIALA JR., EDWARD M.	
01/15/02 DEFENDANT IN CUSTODY	00/00/00
FIALA JR., EDWARD M.	
01/15/02 PRISONER DATA SHEET TO ISSUE	00/00/00
FIALA JR., EDWARD M.	
01/15/02 PRE-SENT INVEST. ORD, CONTD TO	00/00/00
FIALA JR., EDWARD M.	
01/15/02 CONTINUANCE BY AGREEMENT	01/16/02
FIALA JR., EDWARD M.	
01/16/02 DEFENDANT IN CUSTODY	00/00/00
FIALA JR., EDWARD M.	
01/16/02 PRISONER DATA SHEET TO ISSUE	00/00/00
FIALA JR., EDWARD M.	
01/16/02 CONTINUANCE BY AGREEMENT	01/17/02
10:30 AM FOR SENTENCING	
FIALA JR., EDWARD M.	
01/17/02 DEFENDANT IN CUSTODY	00/00/00
FIALA JR., EDWARD M.	
01/17/02 APPEARANCE FILED	00/00/00
FIALA JR., EDWARD M.	
01/17/02 MOTION DEFENDANT - NEW TRIAL	00/00/00 D 2
FIALA JR., EDWARD M.	
01/17/02 SPECIAL ORDER	00/00/00
10:30 AM FOR SENTENCING	
FIALA JR., EDWARD M.	
01/17/02 SENTENCE TO RUN CONCURRENT	00/00/00
10:30 AM FOR SENTENCING	
FIALA JR., EDWARD M.	
01/17/02 PRE-SENT INVEST. ORD, CONTD TO	00/00/00
FIALA JR., EDWARD M.	
01/17/02 DEF SENTENCED ILLINOIS DOC	C007 00/00/00
40 YRS	
FIALA JR., EDWARD M.	
01/17/02 DEF SENTENCED ILLINOIS DOC	C008 00/00/00
40 YRS	
FIALA JR., EDWARD M.	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 01CR0264601

MIGUEL

RIVERA

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

01/17/02 DEF SENTENCED ILLINOIS DOC	C009 00/00/00
40 YRS	
FIALA JR., EDWARD M.	
01/17/02 DEF SENTENCED ILLINOIS DOC	C014 00/00/00
5 YRS	
FIALA JR., EDWARD M.	
01/17/02 CREDIT DEFENDANT FOR TIME SERV	00/00/00
374 DYS	
FIALA JR., EDWARD M.	
01/17/02 SENTENCE TO RUN CONCURRENT	00/00/00
10:30 AM FOR SENTENCING	
FIALA JR., EDWARD M.	
01/17/02 SPECIAL ORDER	00/00/00
10:30 AM FOR SENTENCING	
FIALA JR., EDWARD M.	
01/17/02 SPECIAL ORDER	00/00/00
ALL SENTENCED CONCURRENT.	
FIALA JR., EDWARD M.	
01/17/02 FREE REPORT OF PRCDs DENIED	00/00/00
FIALA JR., EDWARD M.	
01/17/02 CHANGE PRIORITY STATUS	M 00/00/00
85% EXTENDED TERM COUNT SEVEN, EIGHT AND NINE.	
FIALA JR., EDWARD M.	
02/14/02 NOTICE OF APPEAL FILED, TRNSFR	00/00/00
02/26/02 NOTICE OF NOTICE OF APP MAILED	00/00/00
02/26/02 HEARING DATE ASSIGNED	03/01/02 1713
03/01/02 PUBLIC DEF APPTD FOR APPEAL	00/00/00
BIEBEL, PAUL JR.	
03/01/02 O/C FREE REPT OF PROCD ORD N/C	00/00/00
BIEBEL, PAUL JR.	
03/01/02 MEMO OF ORDS & NOA PICKED-UP	00/00/00
BIEBEL, PAUL JR.	
03/15/02 REPT OF PRCDs ORD FR CRT RPT	00/00/00
03/20/02 APPELLATE COURT NUMBER ASGND	00/00/00 02-0699
04/01/02 COMMON LAW RECORD PREPARED	00/00/00
04/03/02 CLR RECD BY APP COUNSEL	00/00/00
PUBLIC DEFENDER	



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 01CR0264601

MIGUEL

RIVERA

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

06/05/02 SUPP TRAN PRO REC/FILE CLK OFF	00/00/00
06/10/02 REPORT OF PROCEEDINGS PREPARED	00/00/00
06/14/02 REPRT/PROCDS RECD BY APP ATTRY	00/00/00
PUBLIC DEFENDER	
08/20/02 SPECIAL ORDER	00/00/00
OFF CALL	
FIALA JR., EDWARD M.	
12/04/02 SPECIAL ORDER	00/00/00
PETITION FOR ATTY FEES IS GRANTED	
LAWS, MARJORIE C.	
12/04/02 SPECIAL ORDER	00/00/00
PETITION GRANTED ON THE AMOUNT OF \$3,383.00	O F CALL
LAWS, MARJORIE C.	
11/13/03 MANDATE FILED	12/04/03 1701
12/04/03 REVIEW COURT AFFIRMANCE	00/00/00
BIEBEL, PAUL JR.	
11/24/03 POST-CONVICTION FILED	00/00/00
11/24/03 HEARING DATE ASSIGNED	12/09/03 1701
12/09/03 CASE ASSIGNED	12/09/03 1727
BERMAN, ANDREW	
12/09/03 CONTINUANCE BY ORDER OF COURT	01/09/04
LAWS, MARJORIE C.	
01/09/04 CONTINUANCE BY ORDER OF COURT	01/23/04
LAWS, MARJORIE C.	
01/23/04 SPECIAL ORDER	00/00/00
P/C DOCKET	
LAWS, MARJORIE C.	
01/23/04 CONTINUANCE BY ORDER OF COURT	02/20/04
LAWS, MARJORIE C.	
02/20/04 DEF WAIVES RIGHT TO BE PRESENT	00/00/00
PANTLE, KATHLEEN M.	
02/20/04 SPECIAL ORDER	00/00/00
TO CLARIFY ORDER AS TO COUNSEL	
PANTLE, KATHLEEN M.	
02/20/04 CONTINUANCE BY AGREEMENT	02/25/04
PANTLE, KATHLEEN M.	
02/25/04 SPECIAL ORDER	00/00/00
MOTION FOR APPMNT OF COUNSEL OTHER THAN PD DEN ED	
LAWS, MARJORIE C.	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 008

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 01CR0264601

MIGUEL

RIVERA

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION		
02/25/04 CONTINUANCE BY ORDER OF COURT	03/25/04	
LAWS, MARJORIE C.		
03/25/04 CONTINUANCE BY AGREEMENT	06/17/04	
LAWS, MARJORIE C.		
06/08/04 SPECIAL ORDER	00/00/00	F 2
PRELIMINARY HEARING TRANSCRIPTS & POLICE REPORTS.		
06/08/04 HEARING DATE ASSIGNED	06/11/04	1727
06/11/04 DEFENDANT IN CUSTODY	00/00/00	
LAWS, MARJORIE C.		
06/11/04 PRISONER DATA SHEET TO ISSUE	00/00/00	
LAWS, MARJORIE C.		
06/11/04 M/D PETN FOR TRNSCT, COM LAW RCD		D 2
MOTION FOR TRIAL TRANSCRIPT, POLICE REPORTS IS DENIED		
LAWS, MARJORIE C.		
06/11/04 PREVIOUS ORDER TO STAND	00/00/00	
LAWS, MARJORIE C.		
06/11/04 CONTINUANCE BY AGREEMENT	06/17/04	
LAWS, MARJORIE C.		
06/17/04 CONTINUANCE BY AGREEMENT	09/21/04	
LAWS, MARJORIE C.		
08/12/04 SPECIAL ORDER	00/00/00	F 2
PETITION OF MANDAMUS.		
08/12/04 HEARING DATE ASSIGNED	08/17/04	1727
08/17/04 DEFENDANT IN CUSTODY	00/00/00	
LAWS, MARJORIE C.		
08/17/04 PRISONER DATA SHEET TO ISSUE	00/00/00	
LAWS, MARJORIE C.		
08/17/04 CONTINUANCE BY ORDER OF COURT	09/21/04	
LAWS, MARJORIE C.		
09/21/04 DEFENDANT IN CUSTODY	00/00/00	
LAWS, MARJORIE C.		
09/21/04 PRISONER DATA SHEET TO ISSUE	00/00/00	
LAWS, MARJORIE C.		
09/21/04 CONTINUANCE BY AGREEMENT	12/02/04	
LAWS, MARJORIE C.		
12/02/04 DEFENDANT IN CUSTODY	00/00/00	
LAWS, MARJORIE C.		

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 009

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 01CR0264601

MIGUEL

RIVERA

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION		
12/02/04 PRISONER DATA SHEET TO ISSUE		00/00/00
LAWS, MARJORIE C.		
12/02/04 CONTINUANCE BY AGREEMENT		03/03/05
LAWS, MARJORIE C.		
03/03/05 CONTINUANCE BY AGREEMENT		03/22/05
LAWS, MARJORIE C.		
* 03/22/05 DEFENDANT ON BOND		00/00/00
LAWS, MARJORIE C.		
03/22/05 CONTINUANCE BY AGREEMENT		03/23/05
LAWS, MARJORIE C.		
03/23/05 DEFENDANT IN CUSTODY		00/00/00
LAWS, MARJORIE C.		
03/23/05 PRISONER DATA SHEET TO ISSUE		00/00/00
LAWS, MARJORIE C.		
03/23/05 CONTINUANCE BY AGREEMENT		05/17/05
LAWS, MARJORIE C.		
05/17/05 DEFENDANT NOT IN COURT		00/00/00
LAWS, MARJORIE C.		
05/17/05 PRISONER DATA SHEET TO ISSUE		00/00/00
LAWS, MARJORIE C.		
05/17/05 CONTINUANCE BY AGREEMENT		05/31/05
LAWS, MARJORIE C.		
05/17/05 DEFENDANT NOT IN COURT		00/00/00
LAWS, MARJORIE C.		
05/17/05 PRISONER DATA SHEET TO ISSUE		00/00/00
LAWS, MARJORIE C.		
05/17/05 CONTINUANCE BY AGREEMENT		05/31/05
LAWS, MARJORIE C.		
05/31/05 DEFENDANT IN CUSTODY		00/00/00
LAWS, MARJORIE C.		
05/31/05 PRISONER DATA SHEET TO ISSUE		00/00/00
LAWS, MARJORIE C.		
05/31/05 CONTINUANCE BY AGREEMENT		06/30/05
LAWS, MARJORIE C.		
06/30/05 CONTINUANCE BY AGREEMENT		07/27/05
LAWS, MARJORIE C.		
07/27/05 DEFENDANT NOT IN COURT		00/00/00
LAWS, MARJORIE C.		

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 010

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 01CR0264601

MIGUEL

RIVERA

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

07/27/05 SPECIAL ORDER	00/00/00
DEF FILES MTN REQUESTING LV TO FILE FIRST SUPPLEMENTAL PC PETITION	
LAWS, MARJORIE C.	
07/27/05 CONTINUANCE BY AGREEMENT	08/18/05
LAWS, MARJORIE C.	
08/18/05 CONTINUANCE BY AGREEMENT	09/13/05
CLAPS, JOSEPH M.	
09/13/05 DEFENDANT NOT IN COURT	00/00/00
LAWS, MARJORIE C.	
09/13/05 DEFENDANT IN CUSTODY	00/00/00
LAWS, MARJORIE C.	
09/13/05 HABEAS CORPUS PETITION FILED	00/00/00
LAWS, MARJORIE C.	
09/13/05 HABEAS CORPUS PETITION ALLOWED	00/00/00
LAWS, MARJORIE C.	
09/13/05 CONTINUANCE BY AGREEMENT	09/27/05
LAWS, MARJORIE C.	
09/27/05 DEFENDANT IN CUSTODY	00/00/00
IDOC CUSTODY	
LAWS, MARJORIE C.	
09/27/05 PRISONER DATA SHEET TO ISSUE	00/00/00
LAWS, MARJORIE C.	
09/27/05 CONTINUANCE BY AGREEMENT	11/29/05
LAWS, MARJORIE C.	
11/29/05 DEFENDANT IN CUSTODY	00/00/00
LAWS, MARJORIE C.	
11/29/05 PRISONER DATA SHEET TO ISSUE	00/00/00
LAWS, MARJORIE C.	
11/29/05 CONTINUANCE BY AGREEMENT	01/04/06
LAWS, MARJORIE C.	
01/04/06 DEFENDANT NOT IN COURT	00/00/00
LAWS, MARJORIE C.	
01/04/06 PRISONER DATA SHEET TO ISSUE	00/00/00
LAWS, MARJORIE C.	
01/04/06 CONTINUANCE BY AGREEMENT	02/02/06
LAWS, MARJORIE C.	
02/02/06 CONTINUANCE BY AGREEMENT	03/09/06
SHEEHAN, KEVIN M.	

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 011

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 01CR0264601

MIGUEL

RIVERA

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION

03/09/06 DEFENDANT NOT IN COURT	00/00/00	
LAWS, MARJORIE C.		
03/09/06 SPECIAL ORDER	00/00/00	
DEFENSE FILES SECOND SUPP P.C PETITION		
LAWS, MARJORIE C.		
03/09/06 CONTINUANCE BY AGREEMENT	03/21/06	
LAWS, MARJORIE C.		
03/15/06 MOTION FOR WRIT OF HABEAS CORP	00/00/00	F 2
03/15/06 HEARING DATE ASSIGNED	03/21/06	1727
03/21/06 DEFENDANT NOT IN COURT	00/00/00	
LAWS, MARJORIE C.		
03/21/06 SPECIAL ORDER	00/00/00	
DEFENSE FILES 651 (C) CERTIFICATE		
LAWS, MARJORIE C.		
03/21/06 CONTINUANCE BY AGREEMENT	04/05/06	
LAWS, MARJORIE C.		
* 04/05/06 SPECIAL ORDER	00/00/00	
<del>MOTION TO PRODUCE THE STATES TRIAL FILE FOR REVIEW BY PETITIONS COUNSEL I</del>		
<del>LAWS, MARJORIE C.</del>		
* 04/05/06 SPECIAL ORDER	00/00/00	
<del>MOTION TO ISSUE SUBPOENAS IS DENIED</del>		
<del>LAWS, MARJORIE C.</del>		
04/05/06 CONTINUANCE BY AGREEMENT	06/29/06	
LAWS, MARJORIE C.		
06/29/06 SPECIAL ORDER	00/00/00	
<del>STATE FILED MOTION TO DISMISS PRO SE AND SUPPLEMENTAL PETITIONS FOR PC RE</del>		
<del>LAWS, MARJORIE C.</del>		
06/29/06 CONTINUANCE BY ORDER OF COURT	08/01/06	
LAWS, MARJORIE C.		
07/27/06 SPECIAL ORDER	00/00/00	
<del>MOTION TO ISSUE SUBPOENAS &amp; FOR DEPOSITIONS</del>		
07/27/06 HEARING DATE ASSIGNED	08/01/06	1727
08/01/06 DEFENDANT NOT IN COURT	00/00/00	
LAWS, MARJORIE C.		
08/01/06 SPECIAL ORDER	00/00/00	
<del>DEF FILED RESPONSE TO THE STATE'S MOTION TO DISMISS</del>		
<del>LAWS, MARJORIE C.</del>		

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 012

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 01CR0264601

MIGUEL

RIVERA

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION	
08/01/06 SPECIAL ORDER	00/00/00
LV TO FILE THE 2ND MOTION TO PRODUCE THE STATE'S TRIAL FILE FOR REVIEW BY	
<del>LAWS, MARJORIE C.</del>	
08/01/06 SPECIAL ORDER	00/00/00
* PETITIONER'S COUNSEL IS STRICKEN	
<del>LAWS, MARJORIE C.</del>	
08/01/06 SPECIAL ORDER	00/00/00
* LV TO FILE THE 2ND MOTION TO ISSUE SUBPOENAS AND FOR DEPOSITIONS IS STRIC	
<del>LAWS, MARJORIE C.</del>	
08/01/06 WITNESSES ORDERED TO APPEAR	00/00/00
<del>LAWS, MARJORIE C.</del>	
08/01/06 CONTINUANCE BY AGREEMENT	09/14/06
<del>LAWS, MARJORIE C.</del>	
09/14/06 POST-CONV PETITION DISMISSED	
STATE'S MOTION/ALLOWED	
<del>LAWS, MARJORIE C.</del>	
09/14/06 SPECIAL ORDER	00/00/00
CLERK TO NOTIFY	
<del>LAWS, MARJORIE C.</del>	
09/14/06 NOTICE OF APPEAL FILED, TRNSFR	00/00/00
<del>LAWS, MARJORIE C.</del>	
09/18/06 NOTIFICATION SENT TO DEFENDANT	00/00/00
09/14/06 NOTICE OF APPEAL FILED, TRNSFR	00/00/00
09/26/06 NOTICE OF NOTICE OF APP MAILED	00/00/00
09/26/06 HEARING DATE ASSIGNED	09/29/06 1713
09/29/06 PUBLIC DEF APPTD FOR APPEAL	
<del>FORD, NICHOLAS R.</del>	
09/29/06 O/C FREE REPT OF PROCD ORD N/C	00/00/00
<del>FORD, NICHOLAS R.</del>	
09/29/06 MEMO OF ORDS & NOA PICKED-UP	00/00/00
<del>FORD, NICHOLAS R.</del>	
11/06/06 REPT OF PRCDs ORD FR CRT RPT	00/00/00

I hereby certify that the foregoing has been entered of record on the above captioned case.  
Date 11/09/06

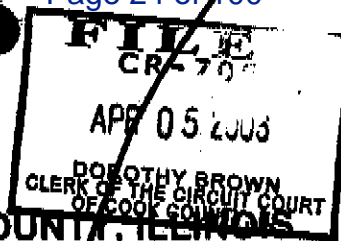
\_\_\_\_\_  
DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT OF COOK COUNTY

EXHIBIT- K #11, Pg 58.

STATE OF ILLINOIS

) SS

COUNTY OF COOK )



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, )

Plaintiff-Respondent, )

vs. )

MIGUEL RIVERA, )

Defendant-Petitioner. )

No. **01-2646**  
~~99 CR 23101~~

Hon. Marjorie Laws,  
Judge Presiding.

---

MOTION TO PRODUCE THE STATE'S TRIAL FILE FOR REVIEW BY  
PETITIONER'S COUNSEL

---

Now comes Edwin A. Burnette, Cook County Public Defender,  
Counsel for the above-named Defendant, by and through Andrea  
Monsees, and, pursuant to the discretion that *People ex rel. Daley v.*  
*Fitzgerald*, 123 Ill. 2d 175, 180, 526 N.E.2d 1313 (1988) recognizes as inhering in  
this Court, respectfully presents this motion requesting that Petitioner  
Miguel Rivera's counsel be permitted to review the State's trial file, in  
support of which counsel represents:

1. This case is before this Court on Petitioner's request for  
collateral (post-conviction) relief pursuant to 725 ILCS 5/122 et seq.  
*People v. Miguel Rivera*, 01 CR 2646 Filed Nov. 24, 2003;
2. This case was tried to a jury empaneled before the Hon.



Edward Fiala;

3. The jury convicted Mr. Rivera of one count aggravated battery for which he was sentenced to 5 years imprisonment and of 3 counts of aggravated kidnaping on each of which he was sentenced to an extended term of 40 years imprisonment, those sentences to be served concurrently.

4. Each of those aggravated kidnaping guilty verdicts was predicated on an intent to secretly confine Heather Carson, Nicholas Carson and Isaiah Ostrowski against his/her will. (Exhibits A1, A2, and A3 - Instructions)

5. To prove aggravated kidnaping under 720 ILCS 10-2 (a)(5) the State must prove that defendant knowingly and secretly confined the victim, and requires a showing either of the secrecy of the confinement or the place of the confinement. *People v. Pasch*, 152 Ill.2d 133, 187, 604 N.E.2d 294 (1992). "Secret" has been defined as concealed, hidden, or not made public." *Id.*, citing *People v. Mulcahey*, 72 Ill. 2d 282, 285, 381 N.E.2d 254 (1978). In *Pasch* the Court reversed defendant's aggravated kidnaping conviction because defendant, though he held his victim hostage in an apartment for 36 hours, made no attempt to keep her presence a secret. 152 Ill.2d 187-188.

6. The material before this Court speaks against Miguel

Rivera ever having intended secret confinement, most notably - -

A. Heather Carson testified that on the way from the Ostrowski apartment, at Miguel Rivera's behest she called the police to say she had not been kidnaped. (Exhibit B - pp. B 60-61 from Heather Carson's Direct testimony.)

B. Defense counsel's trial statement that Heather Carson told Attorney Duffin that she did not see Miguel Rivera with a knife while inside the apartment. (Exhibit C; also pro se petition p. 3)

6. Additional matters alleged in Petitioner's pro se petition support the absence of any intent to secretly confine.

A. That Heather Carson was with him with his sister Maria Rivera later the same day and told Maria and her husband Brian that she and Miguel were going to Florida with the children. (Pro se petition p. 7)

B. That the police reports in the case contained statements attributed to Heather Carson stating she was not kidnaped and stating that she and Miguel Rivera shared expenses while living together in Florida. (Pro se petition p. 5 and related exhibits.)

C. That Heather spoke with an FBI agent the day after the events and assured him she had not been kidnaped. (Pro

se petition pp. 6 and 7)

7. Counsel requests production and inspection of the State's file to determine whether the police reports do contain Heather Carson's exculpatory statements. Production is relevant to Petitioner's ineffective assistance of counsel claim and his *Brady* claim, which assert that both the State and Defense counsel knew of this exculpatory information but did not present it to his jury or his sentencing judge.

WHEREFORE, counsel respectfully requests that this Court direct the State to produce its trial file for inspection.

Respectfully submitted,

EDWIN A. BURNETTE  
COOK COUNTY PUBLIC DEFENDER  
Cook County Attorney No. 30295

  
BY: Andrea Monsees,  
Assistant Public Defender

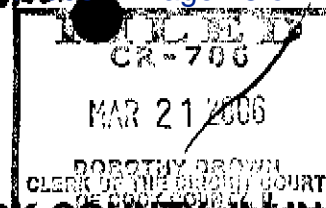
EDWIN A. BURNETTE, COOK COUNTY PUBLIC DEFENDER  
ANDREA MONSEES, ASSISTANT PUBLIC DEFENDER

LAW OFFICES OF THE COOK COUNTY PUBLIC DEFENDER  
69 West Washington - - 15<sup>th</sup> Floor  
CHICAGO, IL 60602  
312-603-0800

STATE OF ILLINOIS

) SS

COUNTY OF COOK )

By ST ORDER 4/5/06  
3/21 FILING STICKER  
+ MOTION FILED  
TODAY

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-CRIMINAL DIVISION**

PEOPLE OF THE STATE OF ILLINOIS, )  
Plaintiff-Respondent, )

vs. )

MIGUEL RIVERA, )  
Defendant-Petitioner. )

01-2646  
No. ~~99 CR 20151~~

Hon. Marjorie Laws,  
Judge Presiding.

**MOTION TO PRODUCE THE STATE'S TRIAL FILE FOR REVIEW BY  
PETITIONER'S COUNSEL**

Now comes Edwin A. Burnette, Cook County Public Defender,  
Counsel for the above-named Defendant, by and through Andrea  
Monsees, and, pursuant to the discretion that *People ex rel. Daley v.*  
*Fitzgerald*, 123 Ill. 2d 175, 180, 526 N.E.2d 1313 (1988) recognizes as inhering in  
this Court, respectfully presents this motion requesting that Petitioner  
Miguel Rivera be released from incarceration or, in the alternative, that the  
Court set reasonable bond, in support of which counsel represents:

1. This case is before this Court on Petitioner's request for  
collateral (post-conviction) relief pursuant to 725 ILCS 5/122 et seq.  
*People v. Miguel Rivera*, 01 CR 2646 Filed Nov. 24, 2003;
2. This case was tried to a jury empaneled before the Hon.

Edward Fiala;

3. The jury convicted Mr. Rivera of one count aggravated battery for which he was sentenced to 5 years imprisonment and of 3 counts of aggravated kidnaping on each of which he was sentenced to an extended term of 40 years imprisonment, those sentences to be served concurrently.

4. Each of those aggravated kidnaping guilty verdicts was predicated on an intent to secretly confine Heather Carson, Nicholas Carson and Isaiah Ostrowski against his/her will. (Exhibit B - Instructions)

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Rivera ever having intended secret confinement, most notably - -

A. Heather Carson testified that on the way from the Ostrowski apartment, at Miguel Rivera's behest she called the police to say she had not been kidnaped. (Exhibit C)

B. Defense counsel's trial statement that Heather Carson told Attorney Duffin that she did not see Miguel Rivera with a knife while inside the apartment. (Exhibit D; also pro se petition p. 3)

6. Additional matters alleged in Petitioner's pro se petition support the absence of any intent to secretly confine.

A. That Heather Carson was with him with his sister Maria Rivera later the same day and told Maria and her husband Brian that she and Miguel were going to Florida with the children. (Pro se petition p. 7)

B. That the police reports in the case contained statements attributed to Heather Carson stating she was not kidnaped and stating that she and Miguel Rivera shared expenses while living together in Florida. (Pro se petition p. 5 and related exhibits.)

C. That Heather spoke with an FBI agent the day after the events and assured him she had not been kidnaped. (Pro se petition pp. 6 and 7)

7. Counsel requests production and inspection of the State's file to determine whether the police reports do contain Heather Carson's exculpatory statements. Production is relevant to Petitioner's ineffective assistance of counsel claim and his *Brady* claim, which assert that both the State and Defense counsel knew of this exculpatory information but did not present it to his jury or his sentencing judge.

Respectfully submitted,

EDWIN A. BURNETTE  
COOK COUNTY PUBLIC DEFENDER  
Cook County Attorney No. 30295

BY:  Andrea Monsees,  
Assistant Public Defender

EDWIN A. BURNETTE, COOK COUNTY PUBLIC DEFENDER  
ANDREA MONSEES, ASSISTANT PUBLIC DEFENDER

\*\*\*\*\*  
LAW OFFICES OF THE COOK COUNTY PUBLIC DEFENDER  
69 West Washington -- 15<sup>th</sup> Floor  
CHICAGO, IL 60602  
312-603-0600

ExHIBiT-L # 12,  
#6. pg's





U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to  
File No.

400 West Monroe Street  
Suite 400  
Springfield, Illinois 62704  
January 14, 2005

Miguel Rivera, N-23881  
Menard Correctional Center  
P.O. Box 711  
Menard, Illinois 62259

Dear Mr. Rivera:

Your letter of December 6, 2004 was forwarded to us by the Chicago Division of the FBI because Menard Correctional Center is in the Springfield Division. The letter does not provide specific information in order for the FBI to determine whether an investigation will be initiated.

If the specific information you have relates to matters in the Chicago, Illinois area, that information should be provided to the FBI in Chicago, Attention: Civil Rights Squad or Public Corruption Squad, depending on the type of information you have. The address is 219 North Dearborn Street, Chicago, Illinois 60604.

Sincerely,

A handwritten signature in dark ink, appearing to read "James A. Cochran", is written over the typed name and title.

James A. Cochran  
Supervisory Special Agent



*United States Attorney  
Northern District of Illinois*

---

*Everett McKinley Dirksen Building (312) 353-5300  
219 S. Dearborn St., 5th Floor  
Chicago, IL 60604*

January 3, 2005

Miguel Rivera  
#N-23881  
PO Box 711  
Menard, IL 62259

Dear Mr. Rivera:

This letter is to acknowledge receipt of your correspondence received by this office on December 6, 2004. The address you are inquiring about for the Chicago Police Department, area #3 on Belmont and Western is as follows:

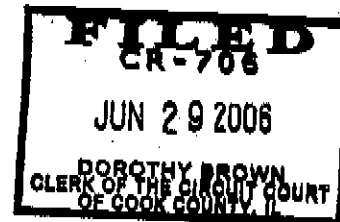
Chicago Police Department  
2452 W. Belmont Avenue  
Chicago, IL 60618

Very truly yours,

PATRICK J. FITZGERALD  
United States Attorney

BY: SCREENING COMMITTEE

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,  
Plaintiff-Respondent,

vs.

MIGUEL RIVERA,  
Defendant-Petitioner.

) No. 01 Cr 02646  
)  
)

) Hon. Marjorie Laws  
) Judge Presiding  
) Post Conviction  
)

) Hon. Edward Flala  
) Judge Presiding  
) Trial.  
)

---

AFFIDAVITS  
(by MIGUEL RIVERA)

1. Notarized April 11, 2006  
(2pp.)
2. Pro se - notarized May 30, 2006  
(2pp.)
3. Pro se - notarized April 11, 2006  
(2pp.)

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, )  
Plaintiff-Respondent, )  
 )  
vs. )  
 )  
MIGUEL RIVERA, )  
Defendant-Petitioner. )

01-2646  
No. ~~93-CR-25154~~  
Hon. Marjorie Laws,  
Judge Presiding.

---

AFFIDAVIT

---

Now comes MIGUEL RIVERA, N-23881, being duly sworn upon his  
oath, and deposes and says:

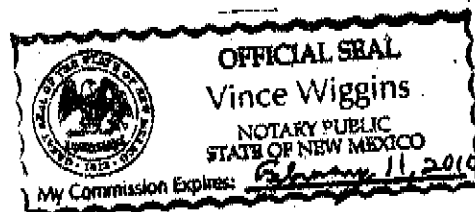
1. He is the Petitioner in this post-conviction proceeding;
2. He believes that the facts contained in his *pro se* petition are true;
3. His disability payments from the Social Security Administration were awarded because of his mental and emotional disability, which extend back to childhood;
4. He believes that if the phone records for Michael Ostrowski's residence and Miguel Rivera's cell phone and/or beeper were subpoenaed they would show that:

- A. In the month of August 2000 approximately 10-12 calls were placed from the Ostrowski residence to Miguel Rivera's cell phone/ beeper; and
- B. On the day of the events for which Miguel Rivera stands charged a call was placed from the Ostrowski residence to Miguel Rivera's cell phone/ beeper before Miguel Rivera went to the Ostrowski residence. *Some calls are Back To Back IN one day*
- FURTHER DEPONENT SAYETH NOT.

SIGNED Miguel Rivera  
NEW I.D.  
REG. NO. N 23881 - 64650  
DATE: 4-11-06

SUBSCRIBED and SWORN TO  
before me this 11 day of April, 2006

Vince Wiggins  
Notary Public



STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,  
Plaintiff-Respondent,

vs.

MIGUEL RIVERA,  
Defendant-Petitioner.

01-2646  
No. ~~93 CR 25151~~

Hon. Marjorie Laws,  
Judge Presiding.

\* Attention Please To The Hon. Judge Ms. Laws, \*

AFFIDAVIT

Now comes MIGUEL RIVERA, being duly sworn upon his oath, and  
deposes and says:

As I was awaiting for trial in 2001 of The  
Month of May or APRIL, Heather Carson did  
contact A friend of Mr. Rivera, Heather-  
Carson call Mr. Noel Rivera, to inform him  
That Miguel Rivera was in jail at The Cook  
County Jail, to help Miguel Rivera out of  
jail meaning to bond him out of jail.

Mr. Noel Rivera will come into court and  
tell the Judge what Heather Carson did

and Ms. Edith Gorman, will all so come into  
court to tell her side to the Judge of  
what she do knows. About The Attorney -  
Mr. Frank Edwards, on The Phone, calls to  
him on A (three way call) Attorney state's their  
is no kidnapping and that he offer Mr. Rivera  
A 5-years sentence for The Agg-battery,

Miguel Rivera. Hopes AND pray THAT The Honi Judge Ms. Mc Laws, We'll call Mr. Noel Rivera and Ms. Edith Gutmen. IN To Court To hear Their sides, AND For A New Trial? because Mr. Rivera's Trial Attorney-Frank Edwards did in fact hidden information from The Jury and Court of witness's, AND FBI agent-Jeff as well Mr. F. Edwards Refuse To Tell and call IN These witness's for Trial, and Too call The Florida-State-Attorney Office. Too fine out why they did not charge MR. Rivera for kidnaping when the State Attorney's went To talk with MR. M. Rivera, at the County Jail IN Florida. The State Attorney lady stated Too MR. Rivera. "you did not do no 'kidnapping'". A Jury Have A legal Right to Hear These witness's and Judge as well To, AND See The Police Reports of Dete. Ms. Karen Skepper, and call her IN To Court,

SIGNED Miguel Rivera

REG. NO. 64650

DATE: 5/30/2006

SUBSCRIBED and SWORN TO  
before me this 30 day of MAY 2006

Sonja R. Ruel  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
Plaintiff-Respondent,	)	
	)	No. 93 CR 25151
vs.	)	
	)	Hon. Marjorie Laws,
MIGUEL RIVERA,	)	Judge Presiding.
Defendant-Petitioner.	)	

---

AFFIDAVIT

---

Now comes MIGUEL RIVERA, N-23881, being duly sworn upon his oath, and deposes and says:

1. He is the Petitioner in this post-conviction proceeding;
2. He believes that the facts contained in his *pro se* petition are true;
3. His disability payments from the Social Security Administration were awarded because of his mental and emotional disability, which extend back to childhood;
4. He believes that if the phone records for Michael Ostrowski's residence and Miguel Rivera's ~~cell phone~~ and/or beeper were subpoenaed they would show that:



- A. In the month of August 2000 approximately 10-12 calls were placed from the Ostrowski residence to Miguel Rivera's ~~cell phone~~ beeper; and
- B. On the day of the events for which Miguel Rivera stands charged a call was placed from the Ostrowski residence to Miguel Rivera's ~~cell phone~~ beeper before Miguel Rivera went to the Ostrowski residence.

FURTHER DEPONENT SAYETH NOT.

SIGNED Miguel Rivera

REG. NO. N 23881 - new I.D.N. 64650.

DATE: 5/1/2006

SUBSCRIBED and SWORN TO  
before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT-M-#13,

**FILED**

MAR 28 2005

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

**DOROTHY BROWN**  
**CLERK OF CIRCUIT COURT**

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS**  
**COUNTY DEPARTMENT-CRIMINAL DIVISION**

**PEOPLE OF THE STATE OF ILLINOIS,**  
**Plaintiff-Respondent,**

**vs.**

**MIGUEL RIVERA,**  
**Defendant-Petitioner.**

No. ~~93 CR 25151~~

**Hon. Marjorie Laws,  
Judge Presiding.**

MOTION REQUESTING RELEASE OF SUBPOENAED MATERIALS

Now comes Edwin A. Burnette, Cook County Public Defender, Counsel for the above-named Defendant, by and through Andrea Monsees, and respectfully presents this motion requesting release of subpoenaed materials, in support of which counsel represents:

1. This case is before this Court on Petitioner's request for collateral (post-conviction) relief pursuant to 725 ILCS 5/122 et seq. *People v. Miguel Rivera*, 01 CR 2646 Filed Nov. 24, 2003;
2. This case was tried to a jury empaneled before the Hon. Edward Fiala;

3. At sentencing it was brought out that the Pre-sentence investigation showed that Mr. Rivera suffers from depression, with an onset in 1983, for which he was prescribed Haldol, which he stopped taking when he was released from IDOC in 1997. (*People v. Miguel Rivera* 1-02-0699, R. p. D-22; Trial Counsel Mr. Edwards speaking in mitigation.) The Pre-sentence investigation itself states:

“In 1983, the Defendant reported that he was found eligible for Social Security Disability because of Depression. He stated that he did not begin to take medication for his Depression until 1994, when he was in IDOC. The Defendant indicated that he was prescribed with Haldon [Haldol], which he stopped taking when he was released from IDOC in 1997. He stated that he stopped taking the medication because it made him gain excessive weight.” (*People v. Miguel Rivera* 1-02-0699 CLR p. 112, page 6 of the Presentence investigation.)

4. Accordingly, it appears that Miguel Rivera was tried and sentenced while disabled by the untreated mental illness of depression.

5. The Circuit Court Clerk's memorandum of orders in this case does not reflect that Miguel Rivera was ever examined for fitness to stand trial or be sentenced.

6. On January 25, 2005, at moving counsel's request the Clerk's office issued a subpoena to the Cook County State's Department of Corrections and Cermak Hospital for Miguel Rivera's medical records.

[Exhibit I]

7. In response counsel received from the Cook County Department of Corrections 10 pages of forms, without any substantive information.

7. Counsel is tendering that report and subpoena to this Court, along with this motion that they be released to counsel.

8. That subpoena requested materials that can reasonably be expected to shed light on Mr. Rivera's mental disability.

Wherefore, counsel respectfully requests that this Court release to his counsel the materials subpoenaed on January 25, 2005.

**Respectfully submitted,**

**EDWIN A. BURNETTE  
COOK COUNTY PUBLIC DEFENDER  
Cook County Attorney No. 30295**

---

**BY: Andrea Monsees,  
Assistant Public Defender**

**EDWIN A. BURNETTE, COOK COUNTY PUBLIC DEFENDER**  
**ANDREA MONSEES, ASSISTANT PUBLIC DEFENDER**

**LAW OFFICES OF THE COOK COUNTY PUBLIC DEFENDER**  
69 West Washington - - 15<sup>th</sup> Floor  
**CHICAGO, IL 60602**  
**312-603-0600**

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS )

-vs- )

NO. 01 CR 2646 )

MIGUEL RIVERA )

**SUBPOENA DUCES TECUM**

TO: COOK COUNTY DEPARTMENT OF CORRECTIONS, 2700 South California Ave.,  
Chicago, Il. 60608 (ATTENTION: RECORDS)

**YOU ARE COMMANDED** to appear to testify before the Honorable Judge Marjorie  
Laws, Presiding in Room 301, 2650 South California, Chicago, Illinois, 60608 on March 3,  
2005, at 9:30 a.m.

**YOU ARE COMMANDED ALSO TO BRING THE FOLLOWING:** the records of Miguel  
Rivera, DOB October 28, 1964, IR # 637055, CB # 14675448, SSI 343-66-9711 including all  
records from the Cook County Jail ~~and from medical services and from Cermak Hospital.~~

**NOTE: COPIES WILL SUFFICE IN LIEU OF COURT APPEARANCE.**

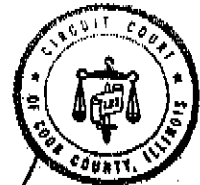
WITNESS this 25 day of Jan, 2005

  
**DOROTHY BROWN**

Clerk of the Cook County Circuit Court

**DIRECT INQUIRIES TO:**

Andrea Monsees, Assistant Public Defender  
69 West Washington, 15<sup>th</sup> Floor  
Chicago, Illinois 60603  
312-603-0600



\*\*\*\*\*

I served this subpoena by handing a copy to \_\_\_\_\_

on \_\_\_\_\_

SERVED BY: 

**DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY**

Ex 1

DEPT OF CORRECTIONS

2005 JAN 28 P 2:41

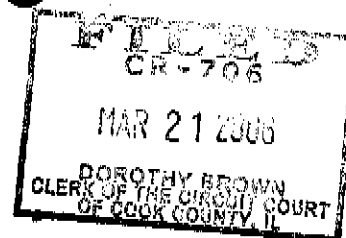
DEPT OF CORRECTIONS  
LEGAL DEPT.

EXHIBIT-N #14,





STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, )  
Plaintiff-Respondent, )

vs. )

MIGUEL RIVERA, )  
Defendant-Petitioner. )

No. **01-2646**  
~~98-CR-2510T~~

Hon. Marjorie Laws,  
Judge Presiding.

---

Certificate of Post-conviction Counsel

Pursuant to Illinois Supreme Court Rule 651( c), Cook County Public Defender Edwin A. Burnette, Counsel for Defendant-Petitioner, acting through his assistant Andrea Monsees, hereby certifies that the following action has been completed on this case:

1. Assigned counsel has consulted with petitioner either by mail or in person to ascertain his contentions of deprivation of constitutional rights;
2. Assigned counsel has examined the record of the proceedings at the trial;
3. Assigned counsel has filed two supplements to the pro se petition which she believes, when taken with Petitioner's pro se petition, adequately present his legal contentions; however, as she understands matters, Petitioner does not agree with her assessment and believes that he needs to address this

Court in person to make his contentions clear and known;

4. There are two matters outstanding that assigned counsel believes she will complete on or before the next court date:

- A. Obtaining and filing Mr. Rivera's affidavit in support of his pro se petition;
- B. Obtaining and filing Mr. Rivera's affidavit asserting his belief that subpoenas of the Ostrowski phone records and his own cell phone records will show a call to his cell phone on August 28, 2000.

Edwin A. Burnette  
Cook County Public Defender  
Counsel for Defendant-Petitioner

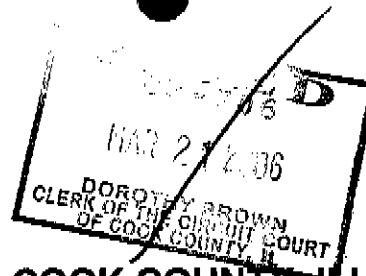
By: Andrea Monsees  
Andrea Monsees  
Assistant Public Defender

Date: March 20, 2006

Edwin A. Burnette  
Cook County Public Defender  
(Andrea Monsees, APD)  
69 West Washington - - 15<sup>th</sup> Floor  
Chicago, Illinois 60601  
312-603-0600

EXHIBIT-0 #15,  
#5. PG 5

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, )  
Plaintiff-Respondent, )

vs. )

MIGUEL RIVERA, )  
Defendant-Petitioner. )

No. 93 CR 25151

Hon. Marjorie Laws,  
Judge Presiding.

---

MOTION TO ISSUE SUBPOENAS

---

Now comes Edwin A. Burnette, Cook County Public Defender,  
Counsel for the above-named Defendant, by and through Andrea  
Monsees, and respectfully presents this motion requesting leave to  
subpoena materials, in support of which counsel represents:

1. This case is before this Court on Petitioner's request for  
collateral (post-conviction) relief pursuant to 725 ILCS 5/122 et seq.  
*People v. Miguel Rivera*, 01 CR 2646 Filed Nov. 24, 2003;
2. This case was tried to a jury empaneled before the Hon.  
Edward Fiala;
3. The jury convicted Mr. Rivera of one count aggravated

battery for which he was sentenced to 5 years imprisonment and of 3 counts of aggravated kidnaping on each of which he was sentenced to an extended term of 40 years imprisonment, those sentences to be served concurrently.

4. Each of those aggravated kidnaping guilty verdicts was predicated on an intent to secretly confine Heather Carson, Nicholas Carson and Isaiah Ostrowski against his/her will. (Exhibit B - Instructions)

5. To prove aggravated kidnaping under 720 ILCS 10-2 (a)(5) the State must prove that defendant knowingly and secretly confined the victim, and requires a showing either of the secrecy of the confinement or the place of the confinement. *People v. Pasch*, 152 Ill.2d 133, 187, 604 N.E.2d 294 (1992). "'Secret' has been defined as concealed, hidden, or not made public." *Id.*, citing *People v. Mulcahey*, 72 Ill. 2d 282, 285, 381 N.E.2d 254 (1978). In *Pasch* the Court reversed defendant's aggravated kidnaping conviction because defendant, though he held his victim hostage in an apartment for 36 hours, made no attempt to keep her presence a secret. 152 Ill.2d 187-188.

6. The material before this Court speaks against Miguel

Rivera ever having intended secret confinement, most notably - -

A. Heather Carson testified that on the way from the Ostrowski apartment, at Miguel Rivera's behest she called the police to say she had not been kidnaped. (Exhibit C)

B. Defense counsel's trial statement that Heather Carson told Attorney Duffin that she did not see Miguel Rivera with a knife while inside the apartment. (Exhibit D; also pro se petition p. 3)

6. Additional matters alleged in Petitioner's pro se petition support the absence of any intent to secretly confine.

A. That Heather Carson was with him with his sister Maria Rivera later the same day and told Maria and her husband Brian that she and Miguel were going to Florida with the children. (Pro se petition p. 7)

B. That the police reports in the case contained statements attributed to Heather Carson stating she was not kidnaped and stating that she and Miguel Rivera shared expenses while living together in Florida. (Pro se petition p. 5 and related exhibits.)

C. That Heather spoke with an FBI agent the day after

the events and assured him she had not been kidnaped. (Prose petition pp. 6 and 7)

7. This case is now in a posture awaiting the State to respond to the petitions.

8. The requested materials will inform Petitioner's answer to any response the State may make in this matter.

Wherefore, counsel respectfully requests that this Court authorize Defendant's counsel to subpoena the following:

- a. Any and all reports and documents generated by personnel in the Chicago Police Department concerning this case;
- b. The trial file of trial counsel;
- c. The telephone records of Miguel Rivera's ~~cell phone~~ and of <sup>"beeper"</sup> Michael Ostrowski's home phone for the date of August 28, 2000;
- d. [For deposition] Petitioner's sister Maria Rivera and her husband Brian.

Respectfully submitted,

EDWIN A. BURNETTE  
COOK COUNTY PUBLIC DEFENDER  
Cook County Attorney No. 30295

---

BY: Andrea Monsees,  
Assistant Public Defender



**EDWIN A. BURNETTE, COOK COUNTY PUBLIC DEFENDER**  
**ANDREA MONSEES, ASSISTANT PUBLIC DEFENDER**

-----  
**LAW OFFICES OF THE COOK COUNTY PUBLIC DEFENDER**  
**69 West Washington - - 15<sup>th</sup> Floor**  
**CHICAGO, IL 60602**  
**312-603-0600**

EXHIBIT-P-16.

**FILED**

MAR 23 2005

**DOROTHY BROWN**  
**CLERK OF CIRCUIT COURT**

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT-CRIMINAL DIVISION**

**PEOPLE OF THE STATE OF ILLINOIS,  
Plaintiff-Respondent,**

**VS.**

**MIGUEL RIVERA,**  
**Defendant-Petitioner.**

No. ~~93 CR 25151~~

**Hon. Marjorie Laws,  
Judge Presiding.**

## MOTION TO ISSUE SUBPOENAS

Now comes Edwin A. Burnette, Cook County Public Defender, Counsel for the above-named Defendant, by and through Andrea Monsees, and respectfully presents this motion requesting release of subpoenaed materials, in support of which counsel represents:

1. This case is before this Court on Petitioner's request for collateral (post-conviction) relief pursuant to 725 ILCS 5/122 et seq.

People v. Miguel Rivera, 01 CR 2646 Filed Nov. 24, 2003;

2. This case was tried to a jury empaneled before the Hon. Edward Fiala;

3. At sentencing it was brought out that the Pre-sentence investigation showed that Mr. Rivera suffers from depression, with an onset in 1983, for which he was prescribed Haldol, which he stopped taking when he was released from IDOC in 1997. ( *People v. Miguel Rivera* 1-02-0699, R. p. D-22; Trial Counsel Mr. Edwards speaking in mitigation.) The Pre-sentence investigation itself states:

“In 1983, the Defendant reported that he was found eligible for Social Security Disability because of Depression. He stated that he did not begin to take medication for his Depression until 1994, when he was in IDOC. The Defendant indicated that he was prescribed with Haldon [Haldol], which he stopped taking when he was released from IDOC in 1997. He stated that he stopped taking the medication because it made him gain excessive weight.” ( *People v. Miguel Rivera* 1-02-0699 CLR p. 112, page 6 of the Presentence investigation.)

4. Miguel Rivera’s affidavit of some of his medical treatment for mental illness accompanies this motion; [Exhibit I]

5. Accordingly, it appears that Miguel Rivera was tried and sentenced while disabled by the untreated mental illness of depression.

6. The Circuit Court Clerk’s memorandum of orders in this case

does not reflect that Miguel Rivera was ever examined for fitness to stand trial or be sentenced.

Wherefore, counsel respectfully requests that this Court authorize Defendant's counsel to subpoena any and all health records concerning Miguel Rivera maintained by the Illinois Department of Corrections, the Cook County Department of Corrections, the United States Social Security Administration, and any healthcare provider in Illinois.

**Respectfully submitted,**

**EDWIN A. BURNETTE  
COOK COUNTY PUBLIC DEFENDER  
Cook County Attorney No. 30295**

---

**BY: Andrea Monsees,  
Assistant Public Defender**

**EDWIN A. BURNETTE, COOK COUNTY PUBLIC DEFENDER  
ANDREA MONSEES, ASSISTANT PUBLIC DEFENDER**

**LAW OFFICES OF THE COOK COUNTY PUBLIC DEFENDER  
69 West Washington - - 15<sup>th</sup> Floor  
CHICAGO, IL 60602  
312-603-0600**

Exhibit-Q<sup>#.17,</sup>

09/06/2007  
06:27:31**Student Performance by Test Item**Page: 4  
PC4

12345 - NMCD / 02 - CNMCF

Test Dates between 09/06/2007 and 06/30/2008

Agency: 12345 - NMCD  
 Site: 02 - CNMCF  
 Class: 03 - Pederson  
 Course:  
 Form: 018M - Employability Math Level D  
 Student: 64650

Program: OTHER  
 Test Date: 09/06/2007  
 Raw Score: 4  
 Scale Score: \*

Item	Correct?	Comp No.	Task	Competency Description
1	No	4.4.8	3	Interpret job-related technical information
2	Yes	4.4.8	3	Interpret job-related technical information
3	No	6.3.2	0	Subtract common or mixed fractions
4	No	6.3.3	0	Multiply common or mixed fractions
5	No	6.8.2	3	Interpret statements of probability
6	No	1.1.5	3	Interpret temperatures
7	No	2.3.1	3	Interpret clock time
8	No	4.4.6	2	Interpret work specifications and quality standards
9	Yes	4.4.6	2	Interpret work specifications and quality standards
10	No	4.4.6	2	Interpret work specifications and quality standards
11	No	4.7.2	2	Identify or demons. effective mgmt. of material resources
12	No	4.7.2	2	Identify or demons. effective mgmt. of material resources
13	Yes	4.7.2	2	Identify or demons. effective mgmt. of material resources
14	No	4.7.3	2	Identify or demonstrate effective mgmt. of human resources
15	No	4.7.3	2	Identify or demonstrate effective mgmt. of human resources
16	No	4.7.3	2	Identify or demonstrate effective mgmt. of human resources
17	Yes	4.7.3	3	Identify or demonstrate effective mgmt. of human resources
18	No	6.6.3	5	Measure area and volume of geometric shapes
19	No	6.6.3	5	Measure area and volume of geometric shapes
20	No	6.6.5	5	Interpret diagrams, illustrations, and scale drawings
21	No	6.6.5	5	Interpret diagrams, illustrations, and scale drawings
22	No	6.6.5	5	Interpret diagrams, illustrations, and scale drawings
23	No	6.5.2	5	Recognize and apply simple geometric formulas
24	No	6.5.3	3	Recognize and apply simple algebraic formulas
25	No	6.6.1	3	Convert units of U.S. standard measurement, metric system
26	No	6.6.1	3	Convert units of U.S. standard measurement, metric system
27	No	4.2.1	2	Interpret wages, deductions, benefits, timekeeping forms
28	No	6.6.3	3	Measure area and volume of geometric shapes
29	No	6.6.3	3	Measure area and volume of geometric shapes
30	No	6.6.6	3	Calculate with units of time
31	No	6.6.6	3	Calculate with units of time
32	No	6.5.3	3	Recognize and apply simple algebraic formulas

\* Score outside of accuracy range

\* Score is a conservative estimate; retesting is recommended.

09/06/2007

06:27:31

**Student Performance by Test Item**

Page: 5

PC4

12345 - NMCD / 02 - CNMCF

Test Dates between 09/06/2007 and 06/30/2008

Agency: 12345 - NMCD  
 Site: 02 - CNMCF  
 Class: 03 - Pederson  
 Course:  
 Form: 018R - Employability Reading Level D  
 Student: 61650

Program: OTHER  
 Test Date: 09/06/2007  
 Raw Score: 6  
 Scale Score: 221

Item	Correct?	Comp No.	Task	Competency Description
1	No	4.4.3	3	Interpret job-related signs, charts, diagrams, forms, etc.
2	Yes	4.6.4	3	Report progress, status of assigned tasks, and problems
3	No	4.6.4	3	Report progress, status of assigned tasks, and problems
4	No	4.6.4	3	Report progress, status of assigned tasks, and problems
5	No	4.2.1	3	Interpret wages, deductions, benefits, timekeeping forms
6	No	4.2.1	3	Interpret wages, deductions, benefits, timekeeping forms
7	Yes	4.2.1	3	Interpret wages, deductions, benefits, timekeeping forms
8	Yes	4.3.2	2	Interpret work safety manuals and related publications
9	No	4.3.2	2	Interpret work safety manuals and related publications
10	Yes	4.3.2	2	Interpret work safety manuals and related publications
11	Yes	4.6.4	3	Report progress, status of assigned tasks, and problems
12	No	4.6.4	3	Report progress, status of assigned tasks, and problems
13	No	4.6.4	3	Report progress, status of assigned tasks, and problems
14	Yes	4.5.7	2	Demonstrate ability to resolve problems with machines
15	No	4.5.7	2	Demonstrate ability to resolve problems with machines
16	No	4.5.7	2	Demonstrate ability to resolve problems with machines
17	No	4.5.6	3	Demonstrate ability to select, set up, use tools, machines
18	No	4.5.6	3	Demonstrate ability to select, set up, use tools, machines
19	No	4.5.6	3	Demonstrate ability to select, set up, use tools, machines
20	No	4.5.6	3	Demonstrate ability to select, set up, use tools, machines
21	No	4.4.3	3	Interpret job-related signs, charts, diagrams, forms, etc.
22	No	4.4.3	3	Interpret job-related signs, charts, diagrams, forms, etc.
23	No	4.4.3	3	Interpret job-related signs, charts, diagrams, forms, etc.
24	No	4.4.3	3	Interpret job-related signs, charts, diagrams, forms, etc.
25	No	4.6.2	3	Interpret work-related correspondence, e.g. memos and e-mail
26	No	4.6.2	3	Interpret work-related correspondence, e.g. memos and e-mail
27	No	4.6.2	3	Interpret work-related correspondence, e.g. memos and e-mail
28	No	4.3.2	2	Interpret work safety manuals and related publications
29	No	2.5.9	2	Identify child care services in the community
30	No	2.5.9	2	Identify child care services in the community

\* Score outside of accuracy range

\* Score is a conservative estimate; retesting is recommended.

**Competency Task Number Legend**

Task 1 - Forms

Task 2 - Charts, maps, consumer billings, matrices, graphs, tables

Task 3 - Articles, paragraphs, sentences, directions, manuals

Task 4 - Signs, price tags, advertisements, product labels

Task 5 - Measurement scales, diagrams

Task 6 - Oral cue

Criteria

Agency(s): 12345 - NMCD

Site(s): 02 - CNMCF



EXHIBIT-R- #18,



**Richard M. Daley**  
Mayor

**Department of Police • City of Chicago**  
3510 S. Michigan Avenue • Chicago, Illinois 60653

**Philip J. Cline**  
Superintendent of Police

June 10, 2005

Miguel Rivera #N-23881  
Stateville Correctional Center  
P.O. Box 112  
Joliet, IL 60434

**Re: NOTICE OF DENIAL OF PUBLIC RECORDS**  
**REQUEST DATE: May 17, 2005**  
**FOIA FILE NO.: 05-0575**

Dear Mr. Rivera:

The Chicago Police Department is in receipt of your letter dated May 13, 2005. You claim that there was a misunderstanding with a Freedom of Information Act (FOIA) request that you submitted in January 2005, and is filed under FOIA File No. 05-0042.

At that time, you requested the "arresting police reports" from your arrest on January 9, 2001. In response, you were offered a copy of the January 9, 2001 Arrest Report, as well as a copy of the General Offense Case Report filed under RD No. F-529122, which is the police report of the incident in reference to your arrest. Based on your original request, our response was appropriate.

Now, you state that you were actually requesting the following records: the general progress report (about 4-6 pages), the general summary reports, statement reports (also about 4 or 5 pages), and a copy of the arresting report from Fort Meyers, Florida dated December 23, 2000, and the arrest warrant. As you are now seeking records not previously requested, your second letter dated May 13, 2005 shall be treated as a new FOIA request and will be assigned FOIA File No. 05-0575.

Your request has been reviewed by the undersigned. Based upon the information provided, it was determined that your request must be denied.

In regard to the general progress report, general summary reports, and statement reports, I have concluded that you are seeking Case Supplementary Reports that were prepared by the Detective Division for the criminal investigation filed under RD No. F-529122. Furthermore, it has been determined that these records pertain to an ongoing criminal court matter being tried in the courtroom of Judge Marjorie Laws, and of which you are a named defendant (Docket No.

01-CR-0264601). Consequently, said reports must be sought in the context of the pending trial. Therefore, our denial is based upon the following Illinois Freedom of Information Act exemptions:

5 ILCS 140/7(1)(a) Information specifically prohibited from disclosure by federal or State law or rules and regulation adopted under federal or State law:

Specifically, Illinois Supreme Court Rules, Article IV: Rules on Criminal Proceedings in the Trial Court;

5 ILCS 140/7 (1)(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy. Information exempted under this subsection (b) shall include but is not limited to:

- (v) information revealing the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies;

5 ILCS 140/7 (1)(c) Records compiled by any public body for administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public body, but only to the extent that disclosure would:

- (iii) deprive a person of a fair and impartial hearing;
- (vi) constitute an invasion of personal privacy under subsection (b) of this Section;
- (vii) endanger the life or physical safety of law enforcement personnel or any other person;

5 ILCS 140/7 (1)(n) Communication between a public body and an attorney or auditor representing the public body that would not be subject to discovery in litigation, and materials prepared or compiled by or for a public body in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the public body, and materials prepared or compiled with respect to internal audits of public bodies.

For your information, the Freedom of Information Act was not intended to be used in lieu of the subpoena process. It is recommended that you contact your attorney to submit a subpoena for records (that has been properly filed with the Clerk of the Circuit Court) with the Chicago Police Department's Subpoena Unit, at the following address:

Chicago Police Department  
Attn: Subpoena Unit  
Records Inquiry & Customer Service Section, Unit 163  
3510 S. Michigan Avenue  
Chicago, IL 60653

In addition, the reports you are seeking may already be part of the court file, which is maintained by the Clerk of the Circuit Court at the following address:

Clerk of the Circuit Court  
Criminal Division  
2650 S. California Avenue, Room 526  
Chicago, IL 60608

In regard to your request for a copy of the arrest report from Fort Meyers, Florida, as well as the arrest warrant, our denial is based upon Section 140/1 of the Illinois Freedom of Information Act, which reads as follows:

---

"This Act is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained or prepared by such public body at the time when this Act becomes effective, except as otherwise required by applicable local, State or Federal Law."

The Chicago Police Department is not the official custodian of records for outside agencies. The correct repository for the arrest report pertaining to your arrest in Florida on December 23, 2000 would be the arresting law enforcement agency in Florida. You must contact that agency directly.

In addition, the arrest warrant is a court record that was issued by the Circuit Court of Cook County. The correct repository for court records is the Clerk of the Circuit Court. You may contact the Criminal Division at the address listed above.

You may file a written appeal of this denial with the Superintendent of Police at the following address:

Superintendent of Police  
Chicago Police Department  
3510 S. Michigan Avenue  
Chicago, IL 60653

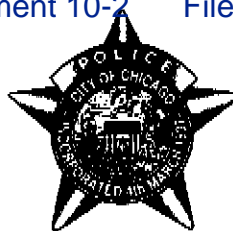
We are in receipt of your payment for the records requested under FOIA File No. 05-0042. Please find the documents and your receipt of payment enclosed with this correspondence.

Sincerely,



Olivia Medina  
Public Information Officer  
Department of Police  
Records Services Division

No Kidnapping - Reports  
nor - statements  
See Police Reports



*general arrest  
Reports  
and  
summery Reports  
statements*

**Richard M. Daley**  
Mayor

**Department of Police • City of Chicago**  
3510 S. Michigan Avenue • Chicago, Illinois 60653

**Philip J. Cline**  
Superintendent of Police

January 26, 2005

**Re: NOTICE OF DENIAL OF PUBLIC RECORDS**  
**REQUEST DATE: January 13, 2005**  
**FOIA FILE NO.: 05-0042**

Dear Sir/Madam,

The Chicago Police Department is in receipt of your Freedom of Information Act request concerning copies of your police reports and preliminary hearing reports in reference to your arrest on January 9, 2001.

Your request was reviewed by the undersigned and it was determined that this request must be partially denied. A search of our documents revealed a police report and an arrest report responsive to your request. Copies of the reports may only be provided with certain information deleted. The deleted material is specifically exempt from disclosure under the following Illinois Freedom of Information Act exemptions:

5 ILCS 140/7 (1)(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. Information exempted under this subsection (b) shall include but is not limited to:

(v) information that reveals the identity of persons who file complaints with or provide information to administrative, investigative, law enforcement or penal agencies.

5 ILCS 140/7 (1)(c) Records compiled by any public body for administrative enforcement proceedings and any law enforcement or correctional agency for law enforcement purposes or for internal matters of a public body, but only to the extent that disclosure would:

(vi) constitute an invasion of personal privacy under subsection (b)

(vii) endanger the life or physical safety of law enforcement personnel or any other person.

However, your request for preliminary reports was reviewed by the undersigned and it was determined that this request must be denied. The Chicago Police Department does not maintain court documents. Therefore, this denial is based on the legislative intent of the Illinois Freedom of Information Act found in Section 140/1, which reads as follows:

*myers*

*Warrent*

Also Received on NOV 21 2003 and filed on NOV 24 2003

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

CLERK OF THE COURT  
CRIMINAL DIVISION

PEOPLE OF THE STATE  
OF ILLINOIS  
VS.

NO. 01 CR 2646

MIGUEL RIVERA, PROSE:

**FILED**

DEC 10 2003

PROOF / CERTIFICATE OF SERVICE

TO: CLERK OF THE COURT  
S. California  
~~265 S. Daley Center~~  
CHICAGO, ILLINOIS. 60608

TO: STATE'S ATTORNEY  
305 DALEY CENTER  
CHICAGO, ILLINOIS. 60604

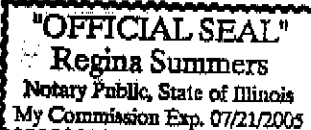
PLEASE TAKE NOTICE THAT ON 11-17-2003, I HAVE PLACED THESE DOCUMENTS LISTED BELOW IN THE INSTITUTIONAL MAIL AT MENARD CORR. CTR., PROPERLY ADDRESSED TO THE PARTIES LISTED ABOVE FOR MAILING THREW THE UNITED STATES POSTAL SERVICE;

PURSUANT TO 28 USC 1746, 18 USC OR 935 ILCS 5/1-109, I DECLARE UNDER PENALTY OF PERJURY THAT I AM A NAMED PARTY IN THE ABOVE DOCUMENTS AND THAT THE INFORMATION CONTAINED THEREIN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

151 Miguel Rivera # 233881  
PRO SE

Subscribed and SWORN TO BEFORE  
ME THIS 17th day of November, 2003.

Regina Summers



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

THE PEOPLE OF THE  
STATE OF ILLINOIS

VS.

MIGUEL RIVERA, PRO SE;

NO. DICR2646

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

NOW COMES THE DEFENDANT PRO SE BEFORE THIS COURT AND RESPECTFULLY REQUEST THAT DEFENDANT BE GRANTED LEAVE TO FILE IN FORMA PAUPERIS THE ATTACHED PETITION FOR POST-CONVICTION RELIEF FILED PURSUANT TO 725 ILCS 5/122 ET SEQ WEST 1992. IN SUPPORT OF THIS REQUEST, DEFENDANT RIVERA STATES THE FOLLOWING:

- 1.) DEFENDANT IS PRESENTLY INCARCERATED AT MENARD CORR. CTR., AND HAS BEEN SINCE 2002.
- 2.) DEFENDANT HAS BEEN SENTENCED TO THREE CONCURRENT EXTENDED TERMS OF FORTY (40) YEARS AND A CONCURRENT FIVE YEAR SENTENCE.
- 3.) DEFENDANT IS PRESENTLY WITHOUT NO ASSETS OR ANY SOURCE OF INCOME IN WHICH TO PAY FOR THE COST OF THESE PROCEEDINGS.

CONCLUSION

WHEREFORE THE DEFENDANT PRO SE PRAYS THAT THE LEAVE BE GRANTED TO LEAVE TO FILE IN FORMA PAUPERIS AND THE ATTACHED PETITION FOR POST CONVICTION RELIEF.

M.R.

CC: FILE

RESPECTFULLY SUBMITTED,

Miguel Rivera #N-23881

MIGUEL RIVERA - #N23881

PRO SE

P.O. BOX 711

MENARD, IL 62450

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE

OF ILLINOIS

VS.

MIGUEL RIVERA, PROSE:

NO. 01CR2646

MOTION TO CONDUCT AN INVESTIGATION, PERMISSION TO  
ENTER INTERROGATIVE QUESTIONING AND SUBPOENA EACH OF THE  
FOLLOWING WITNESS INTO EXAMINATION FOR CAUSE.

NOW COMES THE DEFENDANT IN THE ABOVE CAUSE AND RESPECTFULLY  
REQUEST THIS MOST HONORABLE COURT TO GRANT HIM RELIEF ON THE  
ABOVE MOTION.

- |                   |  |                       |                     |
|-------------------|--|-----------------------|---------------------|
| 1.) MARIA RIVERA  | 6.) ROBERT <del>CLEMONS</del> <sup>CLEMONS</sup> | 11.) DONNA BILLMEIR   | 16.) NOEL RIVERA    |
| 2.) BRYANT RIVERA | 7.) KAREN SKETTER                                | 12.) SHARON LUNN      | 17.) MONICA JOHNSON |
| 3.) RICK DUFFIN   | 8.) TOM FLIKOUIC                                 | 13.) JENNIFER SCHUMAL |                     |
| 4.) FRANK EDWARDS | 9.) HEATHER CARSON                               | 14.) ARIELE PACHERO   |                     |
| 5.) EDITH GUZMAN  | 10.) DONALD CARSON                               | 15.) ROGEL ROGELIO    |                     |

WHEREFORE THE DEFENDANT PRAYS THAT THIS MOTION IN PARTICULAR TO CONDUCT  
AN INVESTIGATION, PERMISSION TO ENTER INTERROGATIVE QUESTIONING AND  
TO SUBPOENA EACH OF THE ABOVE WITNESS INTO EXAMINATION FOR CAUSE BE  
HEREBY GRANTED.

15/ Miguel Rivera #23881  
PROSE



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE  
STATE OF ILLINOIS

VS.

MIGUEL RIVERA, PRO SE

NO. 01CR2646

AFFIDAVIT IN SUPPORT OF REQUEST TO  
PROCEED IN FORMA PAUPERIS

I, MIGUEL RIVERA, BEING FIRST DULY SWORN DEPOSE AND SAY THAT I AM  
THE DEFENDANT IN THE ABOVE ENTITLED CAUSE: IN SUPPORT OF MY MOTION  
TO PROCEED WITHOUT BEING REQUIRED TO PRE-PAY FEES, COSTS OR GIVE SECURITY.

- 1) ARE YOU PRESENTLY EMPLOYED? NO
- 2) DO YOU OWN ANY CASH OR HAVE ANY MONEY IN A CHECKING OR SAVINGS ACCOUNT? NO
- 3) I DONT HAVE ANY MEANS OF FINANCIAL SUPPORT OR MONEY COMING INTO MY ACCOUNT.

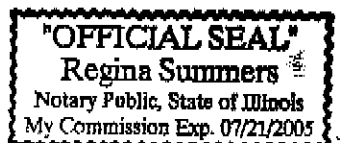
WHEREFORE DEFENDANT PRAYS THAT THE COURT GRANTS him TO LEAVE TO PROCEED  
IN FORMA PAUPERIS.

RESPECTFULLY SUBMITTED,  
Miguel Rivera # 23881  
PRO SE

SUBSCRIBED AND SWORN TO BEFORE  
ME ON THIS 17th day OF November, 2003.

Regina Summers

NOTARY PUBLIC



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE  
OF ILLINOIS  
VS.

MIGUEL RIVERA, PRO SE:

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)  
)

NO. 01 CR 2646

MOTION FOR DISCOVERY FAVORABLE EVIDENCE TO DEFENDANT

NOW COMES THE DEFENDANT HEREIN AND MOVES THE COURT TO ENTER AN ORDER IN THIS CASE REQUIRING THE PROSECUTION TO DISCLOSE AND RELATIVE TO ANY TANGIBLE OBJECTS, TO PRODUCE FOR INSPECTION AND COPYING BY DEFENDANT, ALL EVIDENCE IN THE POSSESSION AND CONTROL OF THE PROSECUTION, OR OTHERS, WHEN THE EVIDENCE MAY BE FAVORABLE TO DEFENDANT AND MATERIAL TO HIS INNOCENCE, OR COULD REASONABLY WEAKEN OR AFFECT ANY EVIDENCE PROPOSED TO BE INTRODUCED AGAINST DEFENDANT, OR IS RELEVANT TO THIS CASE, OR IN ANY MANNER MAY AID DEFENDANT IN THE ASCERTAINMENT OF THE TRUTH; THE DISCLOSURE AND PRODUCTION TO BE MADE WITHOUT REGARD TO WHETHER THE EVIDENCE TO BE DISCLOSE AND PRODUCED IS DEEMED ADMISSIBLE AT THE TRIAL HEREIN; SAID DISCLOSURE AND PRODUCTION TO INCLUDE BUT NOT BE LIMITED TO THE FOLLOWING EVIDENCE;

- 1.) STATEMENTS OF ALL INDIVIDUALS WHO HAVE BEEN INTERVIEWED BY THE PROSECUTION OR ITS AGENTS IN CONNECTION WITH THIS CASE AND WHOM THE PROSECUTION DOES NOT INTEND TO CALL AT TRIAL.

- 2.) ANY AND ALL MEMORANDA OR SUMMARIES OF ANY ORAL STATEMENTS MADE TO THE PROSECUTION OR ITS AGENTS BY ANY INDIVIDUAL IN CONNECTION WITH THIS CASE, WHETHER OR NOT STATEMENTS IF THE STATEMENTS WERE IN WRITING, HAVE BEEN SIGNED AND OR APPROVED BY THE WITNESS, OR THE STATEMENTS RELATE TO THE PROPOSED SUBJECT MATTER OF THE DIRECT TESTIMONY OF THE WITNESS AT TRIAL.
- 3.) ANY AND ALL STENOGRAPHIC RECORDING OR TRANSCRIPTION OF ANY ORAL STATEMENT MADE BY ANY INDIVIDUAL TO THE PROSECUTION OR ITS AGENT IN CONNECTION WITH THIS CASE, WHETHER OR NOT THE RECORDING OR TRANSCRIPTION IS A SUBSTANTIALLY VERBATIM RECITAL OF THE STATEMENT, OR THE STATEMENT RELATES TO THE PROPOSED SUBJECT MATTER OF THE DIRECT TESTIMONY OF THE WITNESS AT TRIAL.
- 4.) THE STATEMENTS OF INDIVIDUALS OR MEMORANDA OR RECORDING OF ANY ORAL STATEMENT OF ANY INDIVIDUAL, WHETHER OR NOT MADE TO THE PROSECUTION OR ITS AGENTS.
- 5.) THE TRANSCRIPTS OF THE TESTIMONY PROVIDED BEFORE THE GRAND JURY DURING ITS INVESTIGATION AND CONSIDERATION OF THE SUBJECT MATTER HEREIN BY ANY INDIVIDUALS WHETHER OR NOT THE STATE PROSECUTION INTENDS TO CALL THEM TO TESTIFY AT TRIAL.
- 6.) ANY AND ALL MEMORANDA, DOCUMENTS OR STATEMENTS USED BY THE PROSECUTION DURING ITS INVESTIGATION OF THE CASE.
- 7.) THE NAMES OF ALL PERSONS WHO MAY HAVE SOME KNOWLEDGE OF THE FACTS OF THE CASE.
- 8.) A COPY OF THE CRIMINAL RECORDS OF ALL PERSONS THE PROSECUTOR INTENDS TO CALL AT TRIAL.

- 9.) ALL REPORTS AND MEMORANDA PREPARED ON BEHALF OF THE STATE PROSECUTION OR OTHERWISE IN CONNECTION WITH THE INVESTIGATION OF THE CASE.
- 10.) WRITTEN OR RECORDED STATEMENTS OR A SUMMARY OF ANY STATEMENT MADE BY DEFENDANT OR COPIES OF SUCH STATEMENTS.
- 11.) THE RESULTS OF REPORTS OF ANY SCIENTIFIC TEST OR EXPERIMENTS OR STUDIES MADE IN CONNECTION WITH THE CASE, OR COPIES OF SUCH REPORTS.

WHEREFORE THE DEFENDANT RESPECTFULLY REQUESTS THAT THE RELIEF SOUGHT IN THIS MOTION BE IN ALL RESPECTS GRANTED.

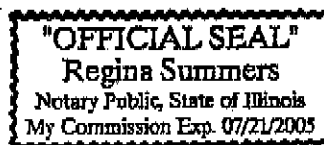
151 Miguel Rivera  
PRO SE

SUBSCRIBED AND SWORN TO BEFORE

ME THIS 17th day OF November, 2003.

Regina Summers

NOTARY PUBLIC



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE  
OF ILLINOIS

VS.

MIGUEL RIVERA, PROSE:

No. 01CR2646

PETITION FOR WRIT OF HABEAS CORPUS ad TESTIFICANDUM

NOW COMES THE DEFENDANT, MIGUEL RIVERA, AND RESPECTFULLY REQUEST  
THIS COURT TO ISSUE A WRIT OF HABEAS CORPUS ad TESTIFICANDUM TO  
THE WARDEN OF MENARD CORRECTIONAL CENTER, AT MENARD, ILLINOIS.

IN SUPPORT THEREOF THE FOLLOWING HEREIN IS STATED:

1) THAT THE DEFENDANT IS CURRENTLY INCARCERATED IN THE ILLINOIS  
DEPARTMENT OF CORRECTIONS AT MENARD CORRECTIONAL CENTER.

2) THAT DEFENDANTS PRESENCE IS NECESSARY TO PROPERLY PRESENT  
THIS CAUSE OF ACTION.

3) THAT THE WARDEN OF MENARD CORRECTIONAL CENTER IS:

JONATHAN R. WALLS (WARDEN)

MENARD CORRECTIONAL CENTER

P.O. BOX 711

MENARD, ILLINOIS. 62259

WHEREFORE DEFENDANT PRAYS FOR A WRIT OF HABEAS CORPUS ad  
TESTIFICANDUM.

151 Miguel Rivera  
PRO SE

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE

OF ILLINOIS

VS.

MIGUEL RIVERA, PRO SE:

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NO. 01 CR 2646

MOTION FOR APPOINTMENT OF COUNSEL OTHER THAN PUBLIC DEFENDER

NOW COMES DEFENDANT AND RESPECTFULLY MOVES THIS MOST HONORABLE COURT FOR AN ORDER OF APPOINTMENT OF COUNSEL OTHER THAN PUBLIC DEFENDER. IN SUPPORT OF THIS MOTION DEFENDANT STATES AS FOLLOWS;

- 1) THAT DEFENDANT IS PRESENTLY HELD IN CUSTODY AT THE MENARD CORRECTIONAL CENTER AT MENARD, ILLINOIS. 62259
- 2) DEFENDANT IS WITHOUT SUFFICIENT FUNDS, INCOME OR ASSETS WITH WHICH TO PAY FOR THE COSTS OF THESE PROCEEDINGS OR TO EMPLOY AN ATTORNEY TO REPRESENT him in this MATTER.
- 3) DEFENDANT STATES THAT he has METIRIOUS ISSUES WHICH IS NEITHER FRIVOLOUS OR MELICIOUS.
- 4) DEFENDANT IS WITHOUT SERVICES OF COUNSEL AND WISHES THAT THIS MOST HONORABLE COURT GRANT AND APPOINT COUNSEL OTHER THAN PUBLIC DEFENDER, TO REPRESENT him in this MATTER.

WHEREFORE DEFENDANT PRAYS THAT THIS MOST HONORABLE COURT GRANT THIS MOTION FOR APPOINTMENT OF COUNSEL OTHER THAN THE OFFICE OF THE PUBLIC DEFENDER.

151 Miguel Rivera  
PRO SE

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

THE PEOPLE OF THE	}	CRIMINAL
STATE OF ILLINOIS	}	NO. <u>01 CR 2646</u>
VS.	}	CHARGE: AGG. KIDNAPPING, ETC.
MIGUEL RIVERA	}	

PETITION FOR POST-CONVICTION RELIEF

NOW COMES THE DEFENDANT PRO SE PURSUANT TO THE ILLINOIS POST-CONVICTION PETITION ACT OF THE ILLINOIS REVISED STATUTES OF CHAPTER 38, 725 ILCS. 5/122-1, ET SEQ AND MOVES THIS HONORABLE COURT TO VACATE THE JUDGEMENT ENTERED ON JANUARY 17, 2002 IN THE CIRCUIT COURT OF COOK COUNTY. IN CONNECTION OF THE CHARGES OF THREE COUNTS OF AGGRAVATED KIDNAPPING TO THREE CONCURRENT EXTENDED TERMS OF 40 YEARS AND A 5 YEAR CONCURRENT TERM FOR AGGRAVATED BATTERY WITH THE TRUTH IN SENTENCING.

- 1.) DEFENDANT MIGUEL RIVERA IS PRESENTLY INCARCERATED AT MENARD CORR. CTR AT P.O. BOX 711, MENARD, ILLINOIS. 62259
- 2.) DEFENDANT STATES THAT HIS STATE AND UNITED STATES AMEND., CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED.
- 3.) THEREFORE, DEFENDANT SHOULD BE ENTITLED TO THE RELIEF OF A POST-CONVICTION PETITION ACT.

STATEMENT

PETITIONER MIGUEL RIVERA WAS CONVICTED OF THREE COUNTS OF AGGRAVATED KIDNAPPING TO THREE CONCURRENT EXTENDED TERMS OF 40 YEARS AND A 5 YEAR CONCURRENT TERM FOR AGGRAVATED BATTERY AFTER A JURY TRIAL IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, IN A BENCH SENTENCING PROCEEDING.

HIS CONVICTION AND SENTENCE WERE AFFIRMED ON DIRECT APPEAL BY THE ILLINOIS SUPREME COURT AND THE SUPREME COURT DENIED THE DEFENDANT THE PETITION FOR LEAVE TO APPEAL. SEE; PEOPLE V. RIVERA, NO. 96374 (2003).

RIVERA FILED A PETITION FOR LEAVE TO APPEAL AND HIS PETITION WAS DENIED AND DISMISSED ON OCTOBER 7, 2003, WITHOUT AN EVIDENTIARY HEARING OR WRITTEN ORDER. AN APPEAL WAS TAKEN BEFORE THE ILLINOIS SUPREME COURT, WHICH AFFIRMED THE DISMISSAL OF THE PETITION ON DIRECT APPEAL ON "10-7-03".

ON APPEAL TO THIS COURT, DEFENDANT RAISES NUMEROUS CONTENTIONS IN OPPOSITION TO THE TRIAL COURT'S DECISION TO DISMISS HIS MOTION PETITION FOR A NEW TRIAL AND THE ILLINOIS SUPREME COURT DENYING HIS APPEAL WITHOUT AN EVIDENTIARY HEARING. DEFENDANT'S PRINCIPAL ARGUMENTS ARE BASED PRIMARILY ON THE ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL. ALTHOUGH DEFENDANT FOCUSES ON THE PERFORMANCE OF HIS TRIAL COUNSEL, HE ALSO CLAIMS THAT HIS ATTORNEY ON DIRECT APPEAL WAS INEFFECTIVE FOR FAILING TO RAISE CERTAIN CLAIMS. WE OBSERVE THAT THE SAME STANDARDS GOVERN THE EVALUATION OF THE PERFORMANCE OF BOTH TRIAL AND APPELLATE COUNSEL. PEOPLE V. WHITEHEAD, 169 ILL. 2D 355, 381 (1996). BECAUSE THESE TWO ISSUES OVERLAP, WE WILL FOCUS ON TRIAL COUNSEL'S PERFORMANCE. SEE TENNER, 175 ILL. 2D AT 378; GUEST, 166 ILL. 2D AT 390. OBVIOUSLY.



## ISSUES

IN THIS POST-CONVICTION RELIEF, DEFENDANT RAISES NUMEROUS ISSUES THAT ESSENTIALLY CLAIM THAT HIS TRIAL COUNSEL WAS INEFFECTIVE BECAUSE HE FAILED TO: (1) REQUEST A BATSON HEARING; (2) PRESENT TESTIMONY OF AN ALIBI WITNESS; (3) REQUEST A NEW TRIAL HEARING; (4) ARGUE THAT DEFENDANT LACKED THE CAPACITY TO FORM THE REQUISITE INTENT TO COMMIT AGGRAVATED KIDNAPPING AND AGGRAVATED BATTERY; (5) INVESTIGATE AND PRESENT AVAILABLE MITIGATING EVIDENCE; DEFENDANT ALSO CLAIMS THAT HIS EXTENDED TERM SENTENCE IS (6) UNCONSTITUTIONAL BECAUSE HE WAS SENTENCED WITHOUT THE BENEFIT OF MITIGATING EVIDENCE HIS COUNSEL FAILED TO DISCOVER. FINALLY, DEFENDANT CLAIMS (7) THE ILLINOIS EXTENDED TERM PENALTY STATUTE IS UNCONSTITUTIONAL.

## EFFECTIVENESS OF COUNSEL DURING GUILT PHASE

DEFENDANT RAISES A SERIES OF CONTENTIONS WHICH FOCUS ON HIS COUNSEL'S PERFORMANCE BEFORE AND DURING TRIAL. THESE CLAIMS ARE BASED ON A DEFENDANT'S CONSTITUTIONAL GUARANTEE TO THE ASSISTANCE OF COUNSEL (U.S. CONST., AMENDS. VI, XIV), WHICH ENCOMPASSES THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL (CUYLER V. SULLIVAN, 446 U.S. 335, 343-44, 64 L. ED. 2D 333, 343-44, 100 S. CT. 1708, 1715-16 (1980)). TO BE SUCCESSFUL ON HIS CLAIMS, DEFENDANT MUST SATISFY THE TWO-PRONG STRICKLAND TEST. SEE STRICKLAND V. WASHINGTON, 466 U.S. 668, 80 L. ED. 2D 674, 104 S. CT. 2052 (1984). UNDER STRICKLAND, A DEFENDANT MUST SHOW THAT (1) HIS COUNSEL'S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS; AND (2) COUNSEL'S DEFICIENT PERFORMANCE RESULTED IN PREJUDICE TO DEFENDANT.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT - CRIMINAL DIVISION

PEOPLE OF THE STATE

OF ILLINOIS

VS.

MIGUEL RIVERA, PRO SE:

NO. 01 CR 2646

LEAVE TO FILE POST-CONVICTION PETITION

NOW COMES DEFENDANT, PRO SE MIGUEL RIVERA, IN ORDER TO GIVE NOTICE TO THE COURT FOR LEAVE TO FILE POST-CONVICTION PETITION DIRECTED TO THE ABOVE NAMED PLAINTIFFS.

IN SUPPORT THEREOF, DEFENDANT STATES AS FOLLOWS;

- 1.) LEAVE TO FILE MOTION FOR POST CONVICTION PETITION AS AN ORIGINAL ACTION BEFORE THIS MOST HONORABLE COURT.
- 2.) DEFENDANT PRESENTS FOR REVIEW ISSUES OF VIOLATIONS OF HIS UNITED STATES CONSTITUTION AMENDMENTS AND LAWS PERTAINING TO HIM DURING TRIAL.
- 3.) DEFENDANT IS CURRENTLY INCARCERATED AT THE MENARD CORR. CTR., AT MENARD, ILLINOIS. 62259
- 4.) DEFENDANT CONTENTS THAT THE ISSUES TO BE PRESENTED ARE TRUE AND CORRECT TO THE BEST OF DEFENDANTS BELIEF AND OR KNOWLEDGE.

PLEASE TAKE NOTICE, THAT ON THE DATE SHOWN HEREAFTER DEFENDANT HAS CAUSED TO BE FILED IN THIS MOST HONORABLE COURT FOR PROMPT HEARING BY THIS COURT.

1st Miguel Rivera  
PRO SE

legal issues that the jury had to resolve before returning a verdict prior to sentencing, Miguel filed a Pro Se Motion for new trial alleging ineffective assistance of Counsel. According to Miguel, there was an attorney, Rick Duffin, who conducted an investigation of this case prior to trial & was willing to testify under oath that Heather told him she never saw Miguel with a knife in the apartment & that she was never kidnapped (III, R. D4-6)

Mr. Duffin related his availability both on the first day of the trial again just before the motion for new trial. Miguel's attorney, Frank Edwards, stated that he did not call Mr. Duffin as a witness because his testimony "would not have mitigated the charges against Rivera." Both defense Counsel & the State's Attorney characterized the prospective evidence as consistent with Heather Carson's alleged trial testimony that she never saw the knife until they were outside of the apartment building (III, R. D5-7). Neither defense Counsel nor the State's Attorney offered any response to the prospective testimony that Heather told Mr. Duffin that she was never kidnapped. The Court denied the defendant's motion. (III, R. D3-14).

When a defendant presents a pro se post-trial claim of ineffective assistance of Counsel, the trial court must examine the factual basis for his claims to determine whether the allegations, if true, "show possible neglect of the case." People v. Haynes, 331 Ill. App. 3d 482, 484, 771 N.E.2d 643 (2002) quoting People v. Bull, 185 Ill. 2d 179, 210, 705 N.E.2d 821 (1998).

If allegations show possible neglect, it is incumbent upon the court to appoint new Counsel "to independently evaluate the defendant's claim" & avoid the conflict of interest that trial Counsel would experience if he had to justify his actions contrary to the client's position." Haynes, 331 Ill. App. 3d at 484; Bull, 185 Ill. 2d at 210 quoting...

.. People v. Johnson, 159 ILL. 2d 97, 125, 638 N.E.2d 484 (1994). IN accord: People v. Nitz, 143 ILL. 2d 82, 134, 572 N.E. 2d 898 (1991) ("IF the allegations show possible neglect of the case, New Counsel should be appointed.") "The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the pro se defendant's allegations of ineffective assistance of counsel." Johnson, 159 ILL. 2d at 125. The trial attorney's behavior was manifestly erroneous. People v. Woodson, 120 ILL. App. 3d 865, 581 N.E. 2d 320 (1991).

Here, the trial court first failed to adequately investigate the actual allegations. Contrary to the characterizations of both defense counsel & the State's Attorney, Heather Carson testified at trial that while she was in the apartment she saw Miguel's knife (J.R. B54-56, B8D). Attorney Rick Duffin would have testified under oath that Heather said she never saw Miguel with a knife inside the apartment. As a result, Duffin's testimony would have clearly impeached Heather on a critical, contested legal element of the aggravated battery & aggravated kidnapping charges: the presence of a "deadly" or "dangerous" weapon. (See jury instructions, C.L. 103-104, 99-101)

Furthermore, neither defense counsel nor the State's Attorney addressed defendant's factual allegations that Duffin would have also testified that Ms. Carson told him that she was never kidnapped. Obviously, such testimony would have impeached Heather on a critical, contested issue of whether or not she was taken to Florida, "against her will." (See jury instructions, C.L. 96-97 100-102) This legal element impacts every count of aggravated kidnapping against the petitioner Miguel Rivera. The trial court's manifestly erroneous failure to adequately investigate the record facts as they related to the defendant...

.. post-trial assertions of ineffective assistance of counsel also forced defense counsel into a clear conflict of interest at the hearing. In an attempt to defend himself against Miguel's allegations of ineffective assistance of counsel, Mr. Edwards ended up mistaking the facts of the case in a manner directly contrary to the client's position, best interests. This is precisely the reason the ILL. Supreme Court has held that new counsel should be appointed to independently investigate the defendant's post-trial claims of ineffective assistance of counsel if there is a possibility of neglect. Haynes, 331 ILL App 3d at 484; Bull, 185 ILL 2d at 210; Johnson, 159 ILL 2d at 25; Strickland v. Washington (1984), 466 U.S. 668, 104 [168 ILL 2d 147] S. Ct. 1052, 80 L. Ed. 2d 674, & People v. Albanese (1984) 104 ILL 2d 504, 525-26, 5 Ill. Dec. 441, 473 N.E. 2d 1246. Attorney Edwards' performance fell below the objective standard of reasonableness, as measured by reference to prevailing professional norms, did prejudice petitioner's case absent the error the outcome would have been different, Strickland 466 U.S. at 687, 104 S. Ct. at 8064, 80 L. Ed. 2d at 693.

Assuming the truth of Mr. Miguel's post-conviction allegations, there would have been no strategic reason for Counsel's failure to call a neutral witness who would have directly undermined the State's case before the jury on each & every charge alleged against the defendant. As a result, petitioner's claims of ineffective assistance of counsel to a minimum establishes "possible neglect of [the] case." Haynes, 331 ILL App 3d at 484; This case is favorably comparable to Haynes. There, the Court reversed for further proceedings on defendant's post-trial motion alleging his attorney's ineffectiveness for failure to call a witness who would have testified that the victim had a gun...

... at the time he was shot by the defendant in that case. Here, such testimony would have corroborated defendant's claim of self-defense Haynes, 331 Ill. App. 3d at 485.

Based on Haynes, as well as the law established by the Illinois Supreme Court in Bull & Johnson, this Honorable Court - should remand this case for the appointment of new counsel to investigate petitioner's claims of ineffective assistance of trial counsel. In the alternative, this Court should remand this cause for an "adequate inquiry into the pro se defendant's - allegations of ineffective assistance of trial counsel." Haynes, 331 Ill. App. 3d at 484 & its progeny.

Furthermore, attorney Frank Edwards was ineffective & incompetent in that he (after being fired) confiscated vital evidence in the case at bar, by confiscating the police reports, which showed clearly. Statement by Heather Carson "I was not kidnaped" she said, Edwards - as woefully incompetent petitioner should be granted a new trial - with competent counsel. 2d S.C.A. Const. Amend. 6. Heather also stated; that she shared expenses with the defendant Miguel during their stay in Florida. The Court should grant an investigation/evidentiary hearing in this matter, for the prosecution withheld evidence from the Court in violation of Brady v. Maryland, 373 U.S. 83, 3 S. Ct. 1194, 10 LEd 2d 215. Evidence was favorable to the accused.

Furthermore; Heather Carson did file for Public Aid with Lee County Florida-Aid office, defense counsel refused to retrieve the records; Heather & her kids weren't kidnaped, counsel was grossly - ineffective. There was records which show that defendant & Heather even purchased furniture together; 4645 S.E. 15 Ave. Cape Coral Florida 33904



.. phone (239) 945-1929 while defendant & Heather lived together at 602 E. 13th St. Cape Coral Florida 33990. Attorney Edwards did help the State asserted that; Heather didn't live with defendant, but instead Ms. Bruberry for four months. Petitioner contends that if that was a fact well then he certainly wasn't holding her captive - Edwards was ineffective.

Further there is evidence of a Ms. Bonnie Nolan, a Customer Service Rep. phone (239) 574-7722 that Heather Carson signed the lease to actually rent the Apartment. Defense Counsel Failed to investigate & State Prosecutor's withheld this evidence from the Court Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed 2d 215. Evidence was favorable to accused People v. Heynes, 331 ILL App. 3d 482, 771 N.E. 2d 643 (2002) People v. Bull, 35 ILL. 2d 179, 765 N.E. 2d 804 (1998). People v. Nitz, 143 ILL. 2d - 82, 72 N.E. 2d 895 (1991). People v. Woodson, 220 ILL. App. 3d 865, 581 N.E. 2d 20 (1991). People v. Drange, 659 N.E. 2d 935, 168 ILL. 2d 138 (ILL 1995)

Attorney Frank Edwards neglected this case at bar. Heather wrote 12 letters, months before trial to Miguel, but, when put in the hands of Edwards, he misplaced the letters. Strickland v. Washington, 466 U.S. 688, 687, 694, 80 L. Ed. 674, 693, 698, 104 S. Ct. 2052, 2064, 2068 (1984).

Heather Carson perjured herself on the stand, when trial Attorney asked her, were you & Miguel, going to see a Doctor - She said "NO". McNeal - Hospital do have the records that they were going to see a Doctor. Doctor - should have been called to testify; Trial Attorney neglected to call him too.

F.B.I Agent Mr. Jeff, did investigate in this case at bar, went to Miguel's Apartment & talked with the next door neighbor & gave his office phone number for Rivera to call him; 8/29/00 Miguel called him (The F.B.I. Agent) that night at approximately 9 to 10 p.m. He & Heather spoke with Jeff. No kidnapping was committed, it's in the Police Reports.

On August 28.00 day of the incident; Maria Rivera would have testified to, a conversation she & Heather had, where Heather & Miguel stopped by the Brian place on the way to Florida, Cicero place. Heather told Maria Brian, Miguel's brother-in-law that: "We are going to Florida" & was happy about it. Defense Counsel Frank Edwards should have also called Maria & Brian as witnesses. Furthermore, Frank Edwards failed to object to Judge Fiala, striking Heather's testimony - that she was not kidnapped by Miguel; constitutes possible neglect of Rivera's case. (B-87, 22, 23, 24.) When this transpired 2-Female Juror's excused themselves from the Jury: Donna Billmeier (#149) & Sharon Lunn (#146).... they wanted nothing else to do with the injustice; & a third Juror stood on the panel shaking her head negatively, Ms. Jennifer Schumal (A-141) as if to say "No" we didn't convict you of that kidnapping.

Furthermore; the following witnesses were not called should have been, because, in their reports, according to them: (there was no kidnapping & the investigation was over): Detective Bob Clemmons, Det. Karen Skepper, Officer Valenvea, Officer Rubino, a Donald - Whiteside & Louise Fitzpatrick.

Mr. Dufins testimony was "critically important" to this case for it went to Miguel's innocence of the alleged kidnapping. Haynes, 331 Ill. App. 3d at 485, 771 N.E. 2d at 646. Heather said she wasn't kidnapped. (Def. Br. 9) Strickland v. Washington, 466 U.S. 668, 683, 694, 80 L. Ed. 2d 674, 693, 698, 101 S. Ct. 2052, 2064, 2068 (1984). It could not have been mere trial strategy not to present an "affirmative defense" (Def. Br. 8) Trial Counsel's behavior was therefore Manifestly Erroneous. People v. Haynes, 31 Ill. App. 3d 482, 485, 771 N.E. 2d 643, 645 (3rd Dist 2002).



... Petitioner did preserve the issue of ineffective assistance of counsel (CL 138-140) Heather told Mr. Duffin, that she was not kidnapped, trial counsel should have impeached her by calling Mr. Duffin to testify (R-D5); Counsel should have introduced the "Water Bill" into Evidence (R. D10) as defendant stated it would further prove Heather was not kidnapped nor the children. Defendant should be granted a new trial with new counsel one who would not prejudice the mind of the jury. Furthermore, Heather called Chicago Social Security office approximately - Sept. 10.00 to transfer her money to Florida sharing expenses with Miguel the defendant. Request Evidentiary Hearing & New Trial, this case should be remanded.

Miguel the petitioner here was originally charged with one count of attempt first degree murder, two counts of home invasion, ten counts of aggravated kidnapping, & two counts of aggravated battery (CLR C10-22) dft. was tried before a jury & was found guilty of three counts of aggravated kidnapping & one count of aggravated battery (CLR 141) He was sentenced to the Ill. Dept. of Corr. for three terms of forty years for the aggravated kidnapping charges concurrently & five years for the aggravated battery to run concurrently (R D31) Also the time on the aggravated Battery is over out date was 7/3/03 He is now losing time on a wrongful conviction of kidnapping.

The grand Jury Foreman more than likely brought back a "true bill" for (5) alleged offenses; Heather, her 2 children, & Michael & one home invasion. The Prosecuting attorney's acted in bad faith, added 7-aggravating kidnapping charges

... or is otherwise armed with a... Category II... Weapon.  
 220 ALCS 5/33A-1 (2000)

### CONCLUSION

The defense contends that there was no intent to secretly confine any one, that Heather was willing & she brought the children along (C-24, 25); & lived with Miguel for 4-long months in Florida; even left alone while Miguel was at work. There was NO Kidnapping (C-12) Miguel wasn't armed (B-90, 11, 12, 13); at all... The defendant understands that Appendix is not retroactive, but for a discussion here please see: Appendix V. New Jersey, 120 S. Ct. 2348 (2000) any fact that increases a sentence beyond Statutory Maximum for offense must be submitted to a jury & proved beyond a reasonable doubt.

If the Category II Weapon being a knife was thrown into the room long before Miguel, Heather & the children went to Florida; how could it have been the aggravating factor? Miguel should not have therefore been sentenced under the extended term statute! This was a domestic situation, or at worst the knife was dropped in the apartment - She went to Florida with him she loved him

This case should be remanded for a new sentencing & or new trial under proper statute - not extended term statute. Request also in investigation in the case at bar.

Miguel Rivera pro se;  
 # N-23881

P.O. Box 711

Menard IL, 62259

INDEX TO EXHIBIT

A... letters to show I done All I can do to obtain Discovery & Common Law Records & Police Reports;

B... A letter From Mr. Richard A. Duffin;

C... Transcript - A-4, Where Trial Counsel Mr. Edwards, Never put up any "Affirmative Defense";

D... Transcript - B-5 Where trial Attorney Edwards Never Introduced the letters, that Heather Carson wrote to the Petitioner;

E... Transcript - B-90 Heather Carson didn't see Defendant throw some knife over a wall;

F... Transcript - B-91 Heather Carson testified she didn't see what happened between Michael & Miguel;

G... Transcript - C-24 where trial attorney Edwards Stated to the jury Miguel & Heather lived together for four months; et cetera;

INDEX TO EXHIBIT

H... Transcript-D-5 at Sentencing, Trial attorney Mr. Edwards, as to Mr. Duffins testimony, in Favor of.

I... At Sentencing the defendant was lied on from the pre-sentence investigation, that dft. has a B.E.D. & his childhood was normal in Transcript-D-18. He has (NO) G.E.D.

J... Transcript-D-10 Edwards now stating Heather Carson lived with ms. Bruberry - Incompetence & Neglect of the Case at bar.

EXHIBIT A.

Letters.



State of Illinois  
Circuit Court of Cook County  
Official Court Reporters

Timothy C. Evans  
Chief Judge

Marilyn A. Filishio  
Administrator

69 W. Washington Street  
Suite 900  
Chicago, Illinois 60602  
(312) 603-8509  
Fax: (312) 603-9820  
TDD: (312) 603-8539

October 29, 2003

Miguel Rivera  
N23881  
Pontiac Correctional Center  
P.O. Box 99  
Pontiac, Il. 61764

Mr. Rivera,

In response to your letter of March 8, 2003 & July 14, 2002, your information has been directed to the wrong agency, the court reporter's office TRANSCRIBE the report of proceedings heard in the courtroom.. This office does not have discovery, nor do we have the common law record.

Please contact THE OFFICE OF THE CLERK OF THE CIRCUIT COURT OF COOK COUNTY, 2650 S. California, Rm. 526, Chicago, Illinois, 60608., for the common law records and as for discovery, you are going to have to get that from your trial attorney. For a copy of the preliminary hearing, please contact James Lawless, Official Court Reporter, Richard J. Daley Center, Rm. 1303, Chicago, Il. 60602.

Your original papers are enclosed

A handwritten signature in black ink, appearing to read 'P. Taylor', with a long horizontal flourish extending to the right.

Pamela C. Taylor  
Assistant Administrator/Criminal  
Official Court Reporter's Office

\* Attention Please \*

3-8-03

To whom it May concern,

My Name is Miguel Rivera #1-23881,  
I'M at The pontiac corr. ctr.

I was Told By Ms. Dorothy -  
Brown, Clerk of the court. To  
write to you because I am in  
need of My discovery, Badly.  
case No. 01-CR-02646.

I did have it before But My  
Trial Attorney, took the  
discovery away from Me,

I am A poor prison I dont  
have a job in here. and I  
only get \$10.00 A Month for  
stat pay, is There a way  
that you can take My State  
pay every month, cause This  
is the only way I can pay  
for the discovery, and My  
Appellate Attorney wont help  
me with the discovery,

please understand that I have been waiting to hear ~~of~~ from you for a long time, because of what Ms. Dorothy Brown said to me on 7-19-02, and no one got back with me. This is the 4<sup>th</sup> letter ~~to~~ I have sent because please I am begging for your help in this matter,

I also need a copy of the preliminary transcripts.

To My Trial Judge Mr. Jiala in Room 600 - at 26<sup>th</sup> St. his understanding he told Trial Attorney... at sentencing to give me all common law records, but Trial Attorney took the discovery away from me, I only have My Trial Transcripts at this time. May I please have your help. it is needed, please have mercy,



I need for you to get back with  
me as soon as ~~able~~ possible  
please,

I do Thank you, for, your  
help, and time,

Miguel Rivera #N-23881  
Pontiac, Conn. Ct.  
P.O. Box 99.  
Pontiac, IL, 61764.

to the Clerk of the circuit court of  
Cook County of IL,

RECEIVED

JUL 19 2002

CLERK OF THE CIRCUIT COURT  
CRIMINAL DIVISION

Ms. Dorothy Brown,

7-14-02.

my name is Miguel Rivera #N-23881. I'm  
at the menard corr. ctr.

I'm writing to you to let you know  
that I have received the trial -

transcripts, but I didn't receive the  
common law records the discovery  
and my evidence that my attorney  
never put in motions with for my  
case, attorney frank D. Edwards  
773-624-0771, it is really needed the  
discovery and all common law  
records please, I thank you for your  
time & help please.

ID-N-23881 Miguel Rivera  
P.O. Box 711  
menard, IL, 62259

THE CIRCUIT COURT CLERK OF COOK COUNTY, ILLINOIS



Criminal Division  
2650 S. California- Room 526  
Chicago, Illinois 60602  
(773) 869-6967

Clerk of the Court

DATE: 7-31-02

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE BE ADVISED THAT THE CLERK'S OFFICE IS IN RECEIPT OF YOUR INQUIRY  
DATED: 7-19-02

ADDITIONAL INFORMATION IS REQUIRED IN ORDER TO PROCESS YOUR REQUEST,  
WE ARE RETURNING YOUR CORRESPONDENCE FOR THE REASON(S) LISTED BELOW.

- ( ) CASE NUMBER MUST BE INCLUDED.
- ( ) CASE NUMBER GIVEN AND NAME DO NOT MATCH.
- ( ) THE REFERENCE NUMBER THAT WAS PROVIDED IS INCORRECT  
PLEASE PROVIDE US WITH THE CORRECT CASE NUMBER.
- ( ) IF CASE NUMBER IS NOT AVAILABLE, YOU NEED TO SEND US YOUR  
FINGERPRINT NUMBER (IR#), DATE OF BIRTH, NAME WITH CORRECT  
SPELLING (PRINT) USED WHEN ARRESTED, ALONG WITH THE DATE OF  
ARREST IN ORDER FOR US TO DO A NAME SEARCH TO FIND THE CASE  
NUMBER.
- ( ) PLEASE EXPLAIN YOUR PURPOSE FOR THE REQUEST.

~~( )~~ YOUR REQUEST HAS BEEN FORWARDED TO \_\_\_\_\_

STATE'S ATTORNEY OFFICE  
RICHARD J. DALEY CENTER  
ROOM 500 - 5<sup>TH</sup> FLOOR  
CHICAGO, IL 60602

CRIMINAL DIVISION (FELONY)  
2650 SOUTH CALIFORNIA - ROOM 526A  
CHICAGO, IL 60602

PUBLIC DEFENDERS OFFICE  
69 W. WASHINGTON  
CHICAGO IL 60602

STATE'S ATTORNEY OFFICE  
2650 SOUTH CALIFORNIA - 11D 54  
CHICAGO, IL 60602

( ) YOUR PETITION HAS BEEN FILED:  
\_\_\_\_\_  
\_\_\_\_\_

OTHER/COMMENTS:  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE RETURN YOUR REQUEST WITH THE ABOVE CORRECT INFORMATION  
AND WE WILL THEN BE ABLE TO FURNISH ANY RECORDS THAT ARE  
AVAILABLE.

RESPECTFULLY,

CLERK OF THE COURT



**SUPREME COURT OF ILLINOIS**  
SUPREME COURT BUILDING  
SPRINGFIELD 62701

**JULEANN HORNYAK**  
CLERK OF THE COURT  
(217) 782-2036

TELECOMMUNICATIONS DEVICE  
FOR THE DEAF  
(217) 524-8132

August 18, 2003

**FIRST DISTRICT OFFICE**  
20TH FLOOR  
160 NO. LASALLE ST.  
CHICAGO 60601  
(312) 783-1332

TELECOMMUNICATIONS DEVICE  
FOR THE DEAF  
(312) 793-1333

Mr. Miguel Rivera  
Reg. No. N-23881  
P. O. Box 112  
Joliet, IL 60434

Re: No. 96374 - People State of Illinois, respondent, v. Miguel Rivera,  
petitioner.

Dear Mr. Rivera:

This will acknowledge receipt of your letter on July 11, 2003.

The change of address for the correctional center has been noted.

Per your inquiry as to whom you should contact in order to obtain your  
discovery police reports and common law records, it is suggested you direct your  
inquiries to:

Clerk of the Circuit Court of Cook County  
1001 Richard J. Daley Center  
50 West Washington  
Chicago, IL 60602

Very truly yours,

A handwritten signature in cursive script that reads "Juleann Hornyak".

Clerk of the Supreme Court

JH:ssl

File Date: 7-7-2008

Case No: 08cv 3848

ATTACHMENT # Exhibits part 3

EXHIBIT \_\_\_\_\_

TAB (DESCRIPTION)  
\_\_\_\_\_



office of the  
**COOK COUNTY PUBLIC DEFENDER**

69 WEST WASHINGTON • 15TH FLOOR • CHICAGO, IL 60602 • (312) 603-0600

Rita A. Fry • Public Defender

March 10, 2003

Miguel Rivera  
Reg. No. N-23881  
Box 99  
Pontiac IL 61764

Re: Appeal No. 02-0699,  
Indictment No. 01-CR-02646

Dear Mr. Miguel Rivera,

Here is a copy of the state's brief in your case. As I told you before, we do not have a copy of your discovery. The person you should contact is your trial attorney.

Yours very truly,

3-7-03 and July 18, 2003,

*Robert Guch*

Robert Guch  
Supervisor, Appeals

*I send two letters to trial Attorney  
Mr. Edwards no answer Back  
they wouldn't help me, why this  
attorney wouldn't ask Me Rita H. Fry  
for a copy of the discovery, my trial  
attorney won't give me a copy, this is  
the last I heard from them. and they  
all know the discovery will prove I am  
innocent and I was only arrested for my  
attorney the youth Myers Florida Sheriff's office;  
The County Jail, have been in all this...*

1 kidnapping of Heather Carson, you are sentenced to  
2 the Illinois Penitentiary for a concurrent term of  
3 40 years.

4 Count nine, aggravated kidnapping of  
5 Isaiah Ostrowski, concurrent term of 40 years.

6 All these sentences shall be served 85 percent  
7 which translates into 34 years you will be  
8 required to serve. You will be required to serve  
9 mandatory supervised release upon your discharge  
10 from custody three years each of those cases.

11 For the offense of aggravated  
12 battery of Michael Ostrowski, sentence five years  
13 concurrent. Judgment is entered upon the  
14 sentence.

15 I find this defendant, in fact, is  
16 indigent and I shall appoint the State Appellate  
17 Defender and free transcripts and common law  
18 record shall be afforded to the defendant.

19 Mr. Edwards, I am going to ask that  
20 you notify the Appellate Defender of their  
21 appointment.

22 MR. EDWARDS: Yes, sir.

23 THE COURT: I am going to also ask you  
24 compute the credit this gentleman has coming as

To the reader: this letter is inspected on the standpoint of security only. Inspection is not a verification of the residents statement. In sending money, send only money orders, postal or bank checks payable to the resident. SEND NO PERSONAL CHECKS OR CASH. You may send books or magazines. Outside the package should clearly state that contents are books or magazines. In addressing mail to the Resident, address to:

RESIDENT'S NAME, INSTITUTION NUMBER,  
BOX 515, JOLIET, ILLINOIS 60432

NAME Frank D. Edwards

STREET 4637 S. Lake Park

CITY Chicago,

STATE IL

ZIP CODE 60653

Attorney  
RELATIONSHIP OF ADDRESSEE

REGISTER NUMBER N-23881

Miguel Rivera  
NAME OF SENDER (written)

~~Frank D. Edwards~~

~~JOLIET, ILLINOIS 60432~~

DATE: 1-26-02

FOR PROMPT DELIVERY - ADDRESS REPLY SAME AS HEADING AT RIGHT

Dear, Edwards;

This is Miguel Rivera writing to you in request for all of the evidence I have given you, and for a copy of the trial transcripts. I have sent a letter to the Judge as well about this matter, I need all this paper work as soon as possible. This week please,

evidences  
the letters  
and the master  
Bill, and common  
law Records and  
discovery, please  
Reports do prove I am  
innocent, on this wrongful  
Conraction of Kidnapping,

Thank you

Miguel Rivera  
N-23881  
Joliet, IL,  
60432,



To the reader: this letter is inspected from the standpoint of security only. Inspection is not a verification of the residents statement. In sending money, send only money orders, postal or bank checks payable to the resident. SEND NO PERSONAL CHECKS OR CASH. You may send books or magazines. Outside the package should clearly state that contents are books or magazines. In addressing mail to the Resident, address to:

RESIDENT'S NAME, INSTITUTION NUMBER,  
BOX 515, JOLIET, ILLINOIS 60432

NAME Frank D. Edwards  
STREET 4637 S. Lake Park  
CITY Chicago,  
STATE IL  
ZIP CODE 60653  
Ottorway  
RELATIONSHIP OF ADDRESSEE

FOR PROMPT DELIVERY - ADDRESS RE

Dear, Edwards;

this is Miguel Rivera  
in Request for all  
I have giving  
copies of the  
transcripts I  
to the Judge as  
matter, I need  
work as soon as  
week please,

evidences  
the letters  
and the master  
Bill, common law  
Records police Reports  
discovery, prove I am  
innocent on this wrongful  
Connection of Kidnapping,

ILL. STATE PENITENTIARY  
BOX 711  
JOLIET, IL 62258

THIS CORRESPONDENCE IS FROM  
AN INMATE OF THE ILLINOIS  
DEPARTMENT OF CORRECTIONS.

To: Mr. Frank D. Edwards  
4637 S. Lake Park  
Chicago, IL 60653





ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION  
of the  
SUPREME COURT OF ILLINOIS

One Prudential Plaza  
130 East Randolph Drive  
Chicago 60601-6219  
(312) 565-2600 (800) 826-8625  
Fax (312) 565-2320

Hilton Offices  
700 East Adams Street  
Springfield 62701-1625  
(217) 522-6838 (800) 252-8048  
Fax (217) 522-2417

Miguel Rivera  
N23881  
P. O. Box 711  
Menard, IL 62259

Chicago  
June 5, 2002

Re: Frank Davion Edwards  
in relation to  
Miguel Rivera  
No. 02 CI 265

Dear Mr. Rivera:

We have received your recent request for an investigation of Frank D. Edwards.

Initially, as you may know, the duties of this Commission relate solely to investigating and prosecuting allegations of professional misconduct against lawyers. When we have enough evidence of wrongful conduct by an attorney, we may try to cause the lawyer to be disbarred or suspended from the practice of law. We cannot provide you with any legal advice or assistance and cannot intervene in your legal matters in any way. No action we could take would change the result of your case or enable you to pursue any court action not already available to you.

Your complaints regarding Mr. Edwards relate to his competence and effectiveness as your defense counsel. Allegations of ineffective assistance of counsel are appropriately addressed and resolved in court through motions, appeals or petitions for post-conviction relief. Therefore, as a general policy, this Commission will not consider such allegations unless a court has first found that the attorney was ineffective.

If you have not already done so, you may wish to raise your concerns about Mr. Edwards' representation in court. If, in the future, any court finds that the attorney failed to represent you effectively, please send us a copy of the court's decision. At that time, we will



ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION  
of the  
SUPREME COURT OF ILLINOIS

One Prudential Plaza  
130 East Randolph Drive  
Chicago 60601-6219  
(312) 565-2600 (800) 826-8625  
Fax (312) 565-2320

Hilton Offices  
700 East Adams Street  
Springfield 62701-1625  
(217) 522-6838 (800) 252-8048  
Fax (217) 522-2417

Miguel Rivera  
June 5, 2002  
Page 2

determine whether further action by this office may be warranted. Until such time, we will take no further action in the matter.

Very truly yours,

Althea K. Welsh  
Senior Counsel

AKW:cd

::ODMA\PCDOCS\MAINLIB\99530\1

EXHIBIT...B

A Letter Mr. Duffin,

**Sachnoff & Weaver, Ltd.**

Attorneys at Law

30 South Wacker Drive • 29th Floor • Chicago, Illinois 60606-7484

Telephone (312) 207-1000

Facsimile (312) 207-6400

www.sachnoff.com

June 9, 2003

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Miguel Rivera  
Inmate No. N-23881  
Pontiac Correctional Center  
P.O. Box 99  
Pontiac, IL 61764

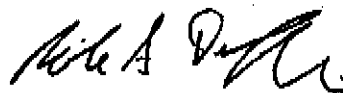
Dear Mr. Rivera:

I am in receipt of your correspondence dated May 30, 2003. As you are aware, I am not your attorney. As you also know, I did speak to your ex-wife in connection with my decision of whether to accept your case. Prior to your trial in the Cook County Circuit Court, I informed you that while I could not act as your attorney, I would be happy to speak to whomever you eventually decided to hire as your attorney. I did eventually speak with your trial attorney prior to the beginning of your trial.

I cannot act as your attorney in connection with your appeal or in connection with any post-conviction proceeding that you are involved in now or will be involved in at a later date. With that said, if you eventually do hire an attorney in connection with your case, I would be happy to speak with that person and provide whatever information that I can.

I sincerely hope that everything works out for you as well as possible under the circumstances. Best regards.

Very truly yours,



Richard A. Duffin

RAD/scp

Document No. 583915

*Donna, This is my witness he will tell you I am innocence on this wrongful conviction, could you please give him a call please he knows alot about my case, and could you please mail me this letter back.*

EXHIBIT...C.

Transcript-A4, MR. Edwards,  
put No affirmative defense for  
the defendant.

1 o'clock sharp.

2 Identify yourselves for the record and  
3 indicate who you represent.

4 MR. EDWARDS: Frank G. Edwards. I represent the  
5 defendant Miguel Rivera.

6 MR. BUNTINAS: Arunas Buntinas, assistant state's  
7 attorney.

8 MR. TIERNAN: Dan Tiernan, Assistant State's  
9 Attorney.

10 THE COURT: Counsel, do you want me to make any  
11 inquiry as to Zehyr?

12 MR. EDWARDS: No, Judge.

13 THE COURT: He does not have to offer any evidence  
14 on his behalf and he's presumed innocent.

15 MR. EDWARDS: I assumed that was going to be part  
16 of your voir dire questioning.

17 THE COURT: But also you don't want this Court to  
18 mention if the defendant chooses not to testify they  
19 would not hold that against him.

20 \* MR. EDWARDS: I believe my defendant's planning on  
21 testifying.

22 THE COURT: Are you going to be indicating any  
23 affirmative defense?

24 \* MR. EDWARDS: No.

**EXHIBIT...D**

*Trial Attorney MR. Edwards, Never introduce  
Evidence - letters from Heather Carson, Wrote  
To the defendant in To Trial,*



1 I simply need the letters to maintain she's made  
2 contact with Mr. Rivera since this arrest.

3 THE COURT: I mean, you certainly have a right  
4 to say that she contacted him or he contacts her.

5 MR. EDWARDS: I'm not planning to introduce the  
6 substance of the letters. ✕

7 THE COURT: Not the substance.

8 MR. EDWARDS: No, just she wrote them. ✕

9 THE COURT: The letters are dated May 3rd and  
10 April 21st. Today's date is the 12th of December. So  
11 someone has been sitting on these letters a long long  
12 time. The letters will not go into evidence but I  
13 will let you go into their relationship that she's  
14 friendly with him and contacted him and she even  
15 visits him if that's the case. You certainly have a  
16 right to do that.

17 MR. EDWARDS: The only thing I plan to do.

18 THE COURT: The substance of the letters shall  
19 not be.

20 MR. EDWARDS: I was not planning to admit them  
21 for the purpose.

22 MR. BUNTINAS: What is the purpose of that with  
23 regard to this? There is no explanation as to why  
24 these letters appeared today, Judge. Why they were

**EXHIBIT...E**

Transcript - B-90. Where Heather Carson, testified  
at trial and stating she never seen Miguel throw  
a knife over a cemetery wall?

1 Q But you weren't?

2 A No, I was not.

3 Q Where did you and Miguel stay for that 2  
4 weeks before you went to Florida?

5 A Miguel had hotels.

6 Q And where were those hotels?

7 A I can't remember. I think in Cicero.

8 Q Now you said at a certain point you  
9 believed he threw some knife over a cemetery wall?

10 A I don't believe I saw this.

11 Q And so then he wasn't armed after that, is  
12 that right?

13 A No, but look at him and look at me.

14 Q Did you ever see him during this occurrence  
15 in the possession of a gun?

16 A No, sir, I never saw a gun.

17 Q Now when you said Miguel was crying and  
18 sad, were you also emotionally upset and crying as  
19 well?

20 A Of course I was.

21 Q Were the children crying as well?

22 A They're calming down.

23 Q Had they been crying before when the  
24 occurrence happened at the apartment?

EXHIBIT...F.

Heather Carson, testified At Trial she did not  
see what happen between Miguel & Michael,  
Transcript-B-91.

1 A Yes.

2 Q And during that tumultuous occurrence at  
3 the apartment, basically you were sleeping and you  
4 didn't see what happened between Miguel --?

5 A No, I didn't, no.

6 Q As a matter of fact when Michael Ostrowski  
7 first entered the room and you woke up, you weren't  
8 even aware he was injured or stabbed or anything else,  
9 were you?

10 A Not at that point. Not there, not then.

11 Q How many letters did you write Miguel?

12 MR. BUNTINAS: Objection, Judge.

13 THE COURT: Basis? I'll permit the inquiry.  
14 You may answer.

15 A Answer it? I can answer?

16 MR. EDWARDS: Yes.

17 A I wrote him a lot of letters because he was  
18 my baby's father and I was confused and I thought  
19 Alonzo should know about his dad.

20 Q When did you stop writing letters?

21 A I think about May or June.

22 Q May or June of this year?

23 A Yes.

24 MR. EDWARDS: Okay. I have no further

EXHIBIT... G.

Transcript - C24, Trial Attorney MR. Edwards,  
Tells Jury kidnapping didn't happen.

1 gas, light bills. They're living as a normal family.

2 MR. BUNTINAS: Objection, Judge. There's no  
3 evidence of that.

4 THE COURT: Very well. Ladies and gentlemen,  
5 you've heard all of the evidence. They're going to  
6 rely on their collective recollections in arriving at  
7 a verdict.

8 ~~X~~ MR. EDWARDS: Thank you, Judge. You heard them  
9 live -- they lived together for four months. So  
10 either Miguel Rivera was sitting there holding this  
11 alleged knife to her throat which he had thrown over  
12 the fence, according to her he was not armed, for four  
13 months 24 hours a day, or Heather wanted to be there.  
14 She never called the police. She never ran outside  
15 when she had her children and Miguel is at work and  
16 claims she was kidnapped and being held prisoner. It  
17 didn't happen. They lived together for four months in  
18 Florida as man and wife. If that's kidnapping, that's  
19 ~~X~~ the strangest kidnapping I've ever heard. ~~X~~

20 Now, what we need in this case for each and  
21 every charge is proof beyond a reasonable doubt. They  
22 have to prove that Miguel Rivera intended to kill  
23 Michael Ostrowski. There is no such evidence, none.  
24 There's evidence there was some kind of altercation,

EXHIBIT...H.

Transcript-D5, Mr. Edwards, At sentencing  
stating He spoke To Mr. Duffin,



1 him. He is willing to come to court.

2 \* MR. EDWARDS: I spoke to Mr. Duffin /  
3 previously. I spoke with him today. He indicated  
4 if he was called to testify, he would testify that  
5 Miss Carson in the apartment did not see a knife,  
6 which is consistent with her testimony on the  
7 stand when she says she saw the knife when  
8 Mr. Rivera threw it over the wall and he was  
9 leaving out of the apartment. \*

10 So, therefore, I believe his  
11 testimony would have not mitigated the charges  
12 against Mr. Rivera; so therefore, I didn't call  
13 him.

14 THE COURT: Is that the reason you would  
15 be calling the lawyer, sir?

16 THE DEFENDANT: Pardon me?

17 THE COURT: Is that the reason --

18 MR. EDWARDS: He wants Mr. Duffin to  
19 represent him.

20 THE DEFENDANT: No, no, no. I didn't say  
21 that. I said I want you to get my witness in. He  
22 has a right to be heard at trial. That's what I  
23 stipulated to you.

24 He told me the same day of trial,

EXHIBIT... I.

Transcript - D-18. defendant was lied on by  
pre-sentencing investigation. I don't have  
(No) GED.

1                   Then he called the victim and said,  
2           "If you don't return to me, I will harm the  
3           child." Eerily similar to exactly happened in  
4           this case, judge. Luckily the Chicago Police  
5           Department was able to intervene before he took  
6           any of those people to Florida for a consensual  
7           four months.

8                   He also has, judge, a residential  
9           burglary in 1990, which he received four years  
10          Illinois Department of Corrections and 1982  
11          robbery and aggravated battery. A history of  
12          violence.

13                   And if you look at the  
14          investigation, judge, the pre-sentence  
15          investigation, there is absolutely nothing in  
16          those pages which mitigate what this defendant  
17          did. Nothing. He says his childhood was normal  
18          and happy. He had no abuse or neglect. He  
19          received his GED in 1981. He is a high school  
20          graduate for 20 years before he committed any of  
21          these acts. But he repeatedly turned to a life of  
22          violence and life of crime. He has no drug  
23          addictions; he has no mental problems. He has no  
24          physical problems.

ILLINOIS  
DEPARTMENT  
OF  
CORRECTIONS

## MEMORANDUM

DATE: 2-21-02  
TO: Rivera, Miguel I.D.O.# 123881 CELL LOCATION: 112-8  
FROM: Donald Ornellas, Educational Facility Administrator  
SUBJECT: RESULTS OF TABE TEST

The results of your TABE test are as follows: Reading 2.3 Math 4.4 Overall 3.4

✓ Due to your entrance test score of below 6.0, your name is being added to the mandatory wait list. Failure to attend classes will result in disciplinary action including loss of institutional good time credits, loss of state pay, and you will be unable to obtain a job assignment. This placement is a MANDATORY ASSIGNMENT. 4th grade Ed.

— Your score is above 6.0 and you have indicated on the testing score sheet that you would like to attend school. Your name is being placed on the GED wait list and you will be called as soon as there is an opening.

— Your score is above 6.0 and you have indicated on the testing score sheet that you would like to attend a vocational class. Your name is being placed on the wait list and you will be called as soon as there is an opening.

— Your score is 6.0 or above and you do not have to attend school and you are not pay-restricted if you take a job.

If you have decided not to attend class and would like your name removed from the wait list indicated above, please mail this memo back to the education department.

\*\*\*YOU DO NOT NEED TO SEND ADDITIONAL REQUESTS FOR SCHOOL PLACEMENT\*\*\*

after

dan  
clamon

ager

EXHIBIT...K.

Transcript - D-10, where Trial Attorney Mr. Edwards,  
now stating Heather Carson, lived with Ms. -  
Bruberry,

1 court. He never gave it to me.

2 THE COURT: State.

3 \* MR. EDWARDS: As you recall, Heather  
4 Carson testified on the stand she lived with  
5 Ms. Bruberry [phonetic] in Florida for up to four  
6 months. That he was not holding her at any time  
7 during that time.

8 The water bill and gas bill, which I  
9 have, I used in cross-examination. I did not  
10 introduce it into evidence. It would have been  
11 cumulative. He testified on the stand he was on  
12 her own free will with Mr. Rivera in Florida.

13 MR. TIERNAN: I guess I would disagree  
14 with that.

15 I would also say that whether or not  
16 she lived with the defendant in Florida is  
17 irrelevant to the charge of aggravated kidnapping.  
18 The testimony was very clear that the defendant  
19 forced Miss Carson out of that apartment at knife  
20 point into the car. At that point, he forced her  
21 at knife point from one place to another and the  
22 elements of aggravated kidnapping are met.  
23 Whatever happens after that point is really  
24 irrelevant, judge.

- 75 -

CITY OF CAPE CORAL



FINANCIAL SERVICES  
DEPARTMENT  
CUSTOMER SERVICE  
DIVISION

July 25, 2002

Miguel Rivera  
N-23881  
P O Box 711  
Menard, IL 62259

Dear Miguel,

Enclosed please find copies of records confirming you had water service in your name at 602 SE 13<sup>th</sup> Street from 9/05/00 through 1/03/01.

The address for Cape Coral Center is: 4645 SE 15<sup>th</sup> Avenue  
Cape Coral, FL 33904  
Phone: (239) 943-1927  
Fax: (239) 943-6853

*They have evidence as well*

**Cape Coral**  
FLORIDA

I hope this helps.

Sincerely,

*Bonnie Nolan*

Bonnie Nolan  
Customer Service Representative

Enc

9/05/00, 13:05:14

CITY OF CAPE CORAL  
CUSTOMER SERVICE APPLICATION

USER ID WASHMITH

NAME RIVERA MIGUEL C & HEATHER  
ADDRESS 602 SE 13TH ST  
CAPE CORAL FL 33990CUSTOMER ID 415183  
Wang SWU Acct NumberEXEMPT TAX NO PENALTY NO  
CASH ONLY NO  
CUSTOMER TYPE TENANT-BUILDER

SERVICE ADDRESS 602 SE 13TH ST CYCLE/ROUTE 01 18 LOCATION ID 179618

INITIATION DATE 9/05/00

JURISDICTION CAPE CORAL  
INSIDE

UNITS 1.00

CLASS DUPLEX  
SECTION CITY OF CAPE CORAL

SEWER

NONMETERED METER RELATED  
JUR CC

UNITS 1.00 WT RELATED

WATER

METER NUMBER 045777298 METERED METERED RATE  
JUR CC

UNITS 1.00

## SERVICE ORDERS

319659 TO TURN ON/INITIAL READ

WT REQUEST DATE 9/05/00

## MISC. INFORMATION

Drive Lic  
SSN/Tax ID  
EmployerIL ID#16054064307R  
331 84 6765  
UNEMPLOYEDI AGREE TO TAKE WATER AND/OR SEWER SERVICE FROM THE CITY OF CAPE  
CORAL UTILITIES DIVISION IN ACCORDANCE WITH THE APPROPRIATE CITY  
ORDINANCES, REGULATIONS AND RATE SCHEDULES NOW IN EFFECT OR ANY  
SUPERSEEDING ORDINANCES, REGULATIONS AND RATES.SIGNATURE OF APPLICANT: Miguel C. Rivera

\*\*\*\*\*



7/16/0  
15:54:3

Customer ID . . . . .  
Type information, press Enter. . . . .  
Name . . . . .  
Mailing address . . . . .  
Zip code (F4) . . . . .  
Delivery point . . . . .  
Phone . . . . .  
Drivers license number . . . . .  
Social security number . . . . .  
Attention/doing business as . . . . .  
Wang SWU Acct Number . . . . .

415183

RIVERA MIGUEL C & HEATHER  
602 SE 13TH ST

33990 CAPE CORAL

FL

941 - 2422579  
IL ID#16054064307R

Customer name type . . . . . C  
Group number (F4) . . . . .  
Enter bank draft information . . . . . N  
Enter additional information . . . . . N

P=Person, C=Compar

Y=Yes, N=No

Y=Yes, N=No

F3=Exit F4=Prompt

F8=Alt address

F5=Zip code maintenance  
F9=Change historyF7=Maintain misc cust info  
F12=Cancel F24=More keys

Customer ID: 415183 Name: RIVERA MIGUEL C & HEATHER  
 Location ID: 179618 Addr: 602 SE 13TH ST

Cycle/Route: 01 18

Initiation date: 9/05/00

Termination date: 1/03/01

Type options, press Enter.

Amount due: \$ .00

Pending: \$ .00

Customer status: A Customer/Location status:

1=Select 5=View detail 6=Display comment codes

Opt	Code	Type	Date	Actual Consumption	Actual Demand	Days	Meter Number	Est CD	Cmnt CD
—	WT	FIN	1/03/01	.10	.00	12	045777298		
—	WT	REG	12/22/00	6.50	.00	25	045777298		
—	WT	REG	11/27/00	12.60	.00	33	045777298		39
—	WT	REG	10/25/00	8.80	.00	29	045777298		39
—	WT	REG	9/26/00	5.20	.00	21	045777298		39
—	WT	INT	9/05/00	.00	.00		045777298		39

F3=Exit F5=Print history  
 F8=Pending/history trans

F6=Meter inventory  
 F9=Budget trans

F7=Meter svc info  
 F24=More keys

~~OSTROWSKI~~  
Michael  
CAPSED  
CAPSED  
OSTROWSKI  
ESAIAN.

## STATEMENT OF FACTS

### "HOME INVASION"

- 1) ON ~~OR~~ ABOUT 8/27/00 BETWEEN 10:30 to 11:00 pm I, MIGUEL RECEIVED A ~~PHONE CALL~~ PAGER CALL FROM MY GIRLFRIEND HEATHER, SAYING SHE WANTED TO TALK CONCERNING OUR RELATIONSHIP PROBLEMS. AT THAT TIME HER ~~TO~~ FRIEND MICHAEL WHO SHE WAS STAYING WITH ~~HEATHER GAVE THE~~ ~~PHONE TO MICHAEL~~ ~~AND~~ STATED HE WANTED TO DISCUSS SOME MATTER WITH ME ALSO. MICHAEL ASKED ME IF I WAS WORKING AND WANTED TO KNOW IF ~~HE~~ I COULD HELP OUT "BY GIVING THEM" RIDES TO WORK.
- 2) ON ~~OR~~ ABOUT 8/28/00 'BETWEEN' THE HRS OF 5:30 to 6:10 AM I, MIGUEL WAS ON GRANVILLE RD WAITING BESIDE ~~MY~~ ~~THE~~ CAC. WE GREETED EACH OTHER AND I ASKED IF IT WAS ALRIGHT IF I TALKED WITH HEATHER. HE STATED YES AND WE PROCEEDED TO HIS APT. WHILE WE WERE APPROACHING THE APT. HE, MICHAEL ASKED WHAT I ~~HE~~ WANTED TO DISCUSS WITH HEATHER, I STATED THAT'S BETWEEN HER & I.
- 3) WE HAD TO WALK THROUGH THE SECURITY LOBBY TO ENTER MICHAEL'S APT HOUSE, AND AT ~~NO~~ TIME DID MICHAEL SHOW ANY CONCERNS OF IT BEING ANY TROUBLE BY ME BEING THERE. AS WE APPROACHED HIS APT, MICHAEL KEYED THE DOOR AND WE ENTERED. HE NOTIONED THAT HEATHER WAS IN THE BEDROOM.
- 4) WHEN I SAW HEATHER SHE DEADED WITH ME ABOUT DISCUSSING OUR PROBLEMS ~~ELSEWHERE~~ AND SHE WANTED

to leave. At that time Michael entered the Bedroom and shouted, "I'm tired Heather of you calling MICHAEL everytime we have a problem AND the same thing with him. You'll call ~~me~~ <sup>me</sup> everytime the two of you have problems.

5) Heather & I started gathering up the kids and belongings AND while I was headed toward the stairs Michael came running out the ~~room~~ <sup>Room</sup> area with his hand high above his ~~head~~ <sup>HEAD</sup>. I couldn't <sup>Really</sup> see what he had, but we started ~~fighting~~ <sup>Fighting</sup>, at that moment we stumbled ~~down~~ <sup>to</sup> the stairs AND when ~~we~~ got up, I could see Michael had blood coming from the front of his shirt

6) Heather came Downstairs with the kids AND we left

ON 8/28/00

### STATEMENT OF FACTS "KIDNAPPING."

1) From Michael's house we stopped AND got gas for the car. From there, we stopped at a <sup>then</sup> ~~to~~ motel AND slept over night. "At no time did Heather ever feel that she was being forced to be with me whatsoever

2) She "Heather" had ample opportunities to go to or call Authorities if she felt that I was holding her

AGAINST her will. We were even at the Greyhound Bus terminal where I paid for 3 tickets to Florida, and at NO particular time did Heather attempt to call ANYONE concerning any trouble. All she kept stating WAS how much she LOVED ME and how much we should get on with our lives together for our kids SAKE.

We bought the tickets from the Greyhound terminal on ~~the~~ About 9/1/00 between the hrs 11:00am to 12:00

3) Now concerning this, I.E.; Kidnapping, while all the time I was going to and from work throughout Florida why didn't Heather ever go to any Authorities to say she was being held AGAINST her will? in 4 months of living in Florida

4) This is the best of my recollection to what happened on those days & nights PERTAINING to ~~those~~ those incidents.

to the police station that was only two blocks away from our house; or why she never said anything to her ~~person~~ pre-nat care doctor in Florida

Case 1:08-cv-03848 Document 10-3 Filed 07/07/2008 Page 34 of 108  
0. On 8/28/00, between the hrs of 8:45 AM To 9:50 AM  
Heather was to call her father, but she called her  
other boyfriend Michael, father, and lied to him

1; on 8/28/00, between the hrs of 5:30 To 6:10 AM  
I, Miguel helped Heather gathering up the kids  
and belongings. And we left from the apt of  
Michael, we went for gas for the car, and  
we stopped at are house, from there, we  
stopped at a motel and slept over night, when  
I Miguel went to the store to By food and  
milk and things, at no time did Heather  
ever feel that she was being forced to  
be with me what so ever.

2, "Heather" had ample opportunities to run  
or call the authorities. if she felt that  
I was holding her against her will,  
and in the Chicago police Reports Heather  
Statement she said that she helped me pay  
Rent for are apt, and in trial she States  
that Miguel took care of her kids Real  
good. all of this is in the Chicago police  
general progress Reports from the Detective,

3, in fl. Heather States to Miguel that this  
problem is only ~~of~~ with me and Michael  
Because its only a agg-battery.

4, why at any time when Miguel was buying the tickets to go to florida, at the grayhound Bus Terminal Heather never attempt to call anyone concerning any trouble, or to no persicular,

5, now concerning this, I.E.; Kidnapping, while I was going to and from work throughout florida why didn't Heather ever go to the authorities, she had never attempt to because she is in this case, and also when I was taking Heather to the hospital to see her Doctor for pre-Halatal care, in florida to have are Body Heather never said anything to her Doctor about being Kidnapping or being held Against her will,

a defendant must show not only that a constitutional right had been violated, impartial, my Attorney never put in motions for the defendant's evidence, and never called his witness into trial, 1. a defendant has constitutional right to confront the witnesses against him and to cross-examine them to expose any falsehood and to reveal the truth during cross-examination, But defense counsel did not do it right because counsel did not call up on the defense witness to bring out the right truth, (I AGREE) AND CROSS EXAM.

2. the defendant's failure to testify is because of the defendant's counsel brain washed the defendant by not testifying



~~TO THE COURT~~

My Name is Miguel Rivera #N-23881 I'M WRITTING To  
you for help with My Appeal ~~I do Need A good~~  
~~Fighting ATTORNEY~~, I AM seving Time for A Agg-  
Battery AND 3-COUNTS of Kidnapping ~~I did NOT~~  
~~do~~, I WAS CONVICTION. ON The Judge gave Me Too  
SENTENCEING 5-years for Agg-BATTERY AND 40-years  
for 3-COUNTS of Kidnapping, The Judge Name is  
Mr. FIALA. please UNDERSTAND My old ATTORNEY  
MR. FRANK D. EDWARDS-773-624-0771-24Hrs 4637S.  
Lakepark Chicago, IL 60653, I do <sup>Feel</sup> he Was Very  
Ineffective Ness in My case he failed To PUT IN  
Evidences ~~AND~~ To call My witnessess, he also  
failed To give Me My Evidences Back To Me I have  
SENT Letters To him My Letters come Back To Me  
if I call him he donT take My calls, Evidences  
water Bill and Letters ~~that~~ that do prove that there  
is NT No kidnapping, he also donT WANT To give  
Me A copy of The TRIAL TRANSCRIPTS and COMMON  
~~LAW~~ LAW Records, I Miguel Rivera did PUT IN  
Motion for TRIAL TRANSCRIPTS AND COMMON LAW  
Records Case No: 01CR-2646 BUT I'M having hard tim.  
Receiving them from The Too sides,

May I send you a copy of The discovery so you could  
 look over because The State Attorneys and My old  
 Attorney did NOT use all of the discovery, cause  
 it do prove that there isn't No kidnapping By The  
 GENERAL PROGRESS REPORTS Detective Division  
 Chicago Police, I do think My old Attorney was  
 working with The State Attorneys and The  
 Witness for the state, said IN TRIAL said NO  
 we lived with him that is IN the TRIAL TRANSCRIPT.  
 IN this case a deposition do have to be did,  
 could you please help me pro bono please and  
 could you get back to me as soon as possible  
 or we could talk by phone if you call The  
 WARDEN Mr. Roger D. Cowan at the Menard  
 Corr-Ctr. at 618-826-5071 the call have to be  
 set up by The WARDEN, I do thank you very  
 much for your help and time.  
 I'm not safe at the manard  
 C.C.P.C.

Miguel Rivera  
 N-23881,  
 manard corr. ctr.  
 P.O. Box 711  
 manard, IL, 62259.

my attorney never called for one  
Expert in Vision - Black + White vs  
Color Vision in the dark

Sincerely,

my work in fl.  
Hayward CONSTRUCTION  
company.

941-242-2579  
Orlando C. Rivera  
602 SE 13th St.  
Cape Coral FL.  
33990,

Tim; 941-940-6205

*the State Attorney witness.*

*324-62-8863*

*Dan's Cornelius*

*9912 S. Wallace*

*Chicago, IL, 60628.*

*773-238-7496*

*WK 773-274-2500*

*630-759-1983*

*Rosemary Carson*

*828 Poplar Lane*

*Boiling Brook, IL, 60440*

*630-759-2897*

*WK - Hulco Chem Co. Naperville*

*on The Back please*

*on Back to -*

to 67 N Broadway Heather E. Carson  
#364. use this address  
Chicago, IL, 60660  
to

~~set~~ she lied about this so she  
 wouldn't go to Jail for the Battery case.

and ~~if~~ the defendant had a  
 dangerous weapon. Took it  
 and threw it over the wall,

we stayed in 2 motels and  
 then we at the greyhound  
 Bus, and then we go to  
 florida get a motel room  
 for 3-days, and we get are  
 apt for months she helps  
 pay Rent, and lot's of people  
 helps us for Thanksgiving  
 and for Christmas, she never  
 says or tell anyone she  
 was being held against her  
 will, and Miguel go to work  
 6 days a week, there ~~was~~ isn't  
 no kidnapping. (I AGREE)

OWNER OF  
 LAND-LORD

(WHERE?  
 MICHAEL  
 OSTROM)

(SHOULD BE BEEN SUPERVISED?)

and to the doorman testified  
 to no man could do have 2 kids  
 dragging one, by his leg and  
 one in my arms and have a  
 gun and a knife in my hands  
 and have feather by the arm,  
 this doorman lied pop's ON Back →





a. pops, could you please. Rewrite these papers the alot better the right way with in the law way, please.

and please Remember what I said  
to you about the discovery where  
she said she helped me pay rent  
for apt for 4 or 5 months,

and Remember what I told you  
pop's about the letters she wrote  
to me that she said's, she  
said's I told the Detective that  
you didn't force her to go to florida,

we need to get in the Law Library  
together,

ON Back  $\rightarrow$

I need to tell them we need the phone records. from the home of the Ostrouski family, from May of 2000 to Aug 28-2000

and the Mr. Don ~~Car~~ Carson family home from May 2000 to January 3-2001 it will prove that they the State and the witness lied on me in trial. the attorney lied. and about my attorney taking my evidence - 3-months before trial.

I have to get the screening sets in court.

and Judy Heather lied about being in "Shelley's the police" and to "the father of Michael Ostrouski" when she called his father on 8-28-00 at or between 8:30 AM to 9:00 AM. from my sister house, it is on the Ostrouski family phone records, because she do know's that there isn't no kidnapping to no one. and she took the kids with us on her own free will. and she was a kid. and she was a kid.

### MOTION FOR a NEW TRIAL

Now comes the defendant, Miguel Rivera, after a finding of guilty and before sentence and respectfully moves this Honorable Circuit Court to set aside the verdict of guilty in the above-entitled cause and grant him a new trial, it being expressly understood that defense counsel has not yet been furnished with an official transcript of the trial and makes this Motion on behalf of his client, without prejudice to or waiving the later discovery of error in the record.

In Support whereof, Defendant states:

1. The state failed to prove the defendant guilty of the charge(s) beyond reasonable doubt.

2. The verdict is against the weight of the evidences.
3. The defendant was denied due process of Law.
4. The defendant was denied equal protection of the Law.
5. The State failed to prove every material allegation of the Indictment beyond a reasonable doubt.
6. The Court erred in giving instructions on behalf of the State over the defendant's objection.
7. Ineffectiveness of Counsel, Defense Counsel failed to properly investigate the case.
8. Ineffectiveness of Counsel, Defense Counsel failed to called witnesses on behalf of defendant
9. Ineffectiveness of counsel, Defense Counsel failed to presented evidences on behalf of the defendant.
10. Ineffectiveness of Counsel, Defense Counsel failed represented the defendant properly.
11. Ineffectiveness of Counsel, Defense Counsel, also failed to put forth effort of behalf of the defendant defense.

(INEFFECTIVE COUNSEL)

MOTION FOR RETRAIL

1. The SIX Amendment right to counsel is the right to assistance of counsel, and the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that trial cannot be relied on as having a just result.
2. The facts of this case make it clear that counsel's conduct at and before respondent's sentencing proceedings were found unreasonable under the above standards.
3. This case requires to consider the proper standards for judging a criminal defendant's contention that the Constitution requires a conviction sentence to be set aside because counsel's assistance a trial was ineffective.
4. Respondent asserted that counsel was ineffective because he failed to investigate and present character witnesses, to seek a presentence investigation report to present meaningful arguments to sentencing judge.

5. The Sixth Amendment imposes on counsel a duty to investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options.

6. Thus, a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding.

7. The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, - since access to counsel's skill and knowledge is necessary to accord defendants the ample opportunity to meet the case of the prosecution" to which they are entitled.

8. Representation of a criminal defendant entails certain basic duties.

9. Counsel's function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest.

10. ALSO, IF COUNSEL HAD FAIRLY ASSESSED THE POTENTIAL STRENGTH OF THE MITIGATING EVIDENCE AVAILABLE TO HIM, COUNSEL'S FAILURE TO MAKE ANY SIGNIFICANT EFFORT TO FIND OUT WHAT EVIDENCE MIGHT BE GARNERED FROM RESPONDENT'S RELATIVES AND ACQUAINTANCES, SURELY CANNOT BE DESCRIBED AS "REASONABLE."

11. ALSO, IF COUNSEL HAD INVESTIGATED THE AVAILABILITY OF MITIGATING EVIDENCE, THERE IS SIGNIFICANT CHANCE THAT RESPONDENT WOULD HAVE HAD A FAIR AND REASONABLE TRIAL.



ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION  
of the  
SUPREME COURT OF ILLINOIS

One Prudential Plaza  
130 East Randolph Drive  
Chicago 60601-6219  
(312) 565-2600 (800) 826-8625  
Fax (312) 565-2320

Hilton Offices  
700 East Adams Street  
Springfield 62701-1625  
(217) 522-6838 (800) 252-8048  
Fax (217) 522-2417

Miguel Rivera  
N23881  
P. O. Box 711  
Menard, IL 62259

Chicago  
June 5, 2002

Re: Frank Davion Edwards  
in relation to  
Miguel Rivera  
No. 02 CI 265

Dear Mr. Rivera:

We have received your recent request for an investigation of Frank D. Edwards.

Initially, as you may know, the duties of this Commission relate solely to investigating and prosecuting allegations of professional misconduct against lawyers. When we have enough evidence of wrongful conduct by an attorney, we may try to cause the lawyer to be disbarred or suspended from the practice of law. We cannot provide you with any legal advice or assistance and cannot intervene in your legal matters in any way. No action we could take would change the result of your case or enable you to pursue any court action not already available to you.

Your complaints regarding Mr. Edwards relate to his competence and effectiveness as your defense counsel. Allegations of ineffective assistance of counsel are appropriately addressed and resolved in court through motions, appeals or petitions for post-conviction relief. Therefore, as a general policy, this Commission will not consider such allegations unless a court has first found that the attorney was ineffective.

If you have not already done so, you may wish to raise your concerns about Mr. Edwards' representation in court. If, in the future, any court finds that the attorney failed to represent you effectively, please send us a copy of the court's decision. At that time, we will





ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION  
of the  
SUPREME COURT OF ILLINOIS

One Prudential Plaza  
130 East Randolph Drive  
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700 East Adams Street  
Springfield 62701-1625  
(217) 522-6838 (800) 252-8048  
Fax (217) 522-2417

Miguel Rivera  
June 5, 2002  
Page 2

determine whether further action by this office may be warranted. Until such time, we will take no further action in the matter.

Very truly yours,

Althea K. Welsh  
Senior Counsel

AKW:cd

\\ODMA\PCDOCS\MAIN\LIB\99530\1

To the reader: this letter is inspected from the standpoint of security only. Inspection is not a verification of the residents statement. In sending money, send only money orders, postal or bank checks payable to the resident. SEND NO PERSONAL CHECKS OR CASH. You may send books or magazines. Outside the package should clearly state that contents are books or magazines. In addressing mail to the Resident, address to:

RESIDENT'S NAME, INSTITUTION NUMBER,  
BOX 515, JOLIET, ILLINOIS 60432

NAME Frank D. Edwards

STREET 4637 S. Lake Park

CITY Chicago,

STATE IL

ZIP CODE 60653

Attorney  
RELATIONSHIP OF ADDRESSEE

REGISTER NUMBER N-23881

Miguel Rivera  
NAME OF SENDER (written)

~~JOLIET, ILLINOIS 60432~~

JOLIET, ILLINOIS 60432

DATE: 1-26-02

FOR PROMPT DELIVERY - ADDRESS REPLY SAME AS HEADING AT RIGHT

Dear, Edwards;

this is Miguel Rivera writing to you  
in request for all of the evidence  
I have giving you, and for a  
copies of the trial transcript  
to the Judge as well about this  
matter, I need all this paper  
work as soon as possible this  
week please,

evidences  
the letters  
and the water  
Bill,

Thank you

Miguel Rivera

N-23881

Joliet, IL

60432,

To the reader: this letter is inspected from the standpoint of security only. Inspection is not a verification of the residents statement. In sending money, send only money orders, postal or bank checks payable to the resident. SEND NO PERSONAL CHECKS OR CASH. You may send books or magazines. Outside the package should clearly state that contents are books or magazines. In addressing mail to the Resident, address to:

RESIDENT'S NAME, INSTITUTION NUMBER,  
BOX 515, JOLIET, ILLINOIS 60432

NAME Frank D. Edwards  
STREET 4637 S. Lake Park  
CITY Chicago,  
STATE IL  
ZIP CODE 60653  
Attorney  
RELATIONSHIP OF ADDRESSEE

**FOR PROMPT DELIVERY - ADDRESS RE**

Dear, Edwards;

this is Miguel Rivera  
in request for all  
I have giving  
copies of the  
transcripts. I  
to the Judge as  
matter, I need  
work as soon as  
week please,

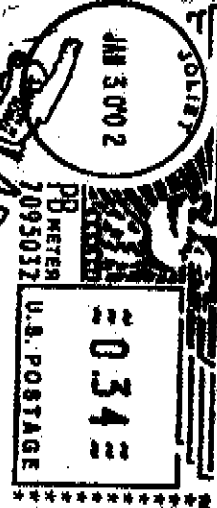
evidences  
the letter's  
and the master  
Bill,

JOLIET, IL,  
60432,

ILL. STATE PENITENTIARY  
BOX 711  
MENARD, IL 62250

THIS CORRESPONDENCE IS FROM  
AN INMATE OF THE ILLINOIS  
DEPARTMENT OF CORRECTIONS.

To: Mr. Frank D. Edwards  
4637 S. Lake Park  
Chicago, IL, 60653



9-1-01

Dear, Mr. Frank Edwards;

This is Miguel Rivera #200/0003412 Division-11-AH-PC

I'm writing to you about why you haven't come to see me it is real important please understand that because I need you to be here this week please, and I have talk with Mr. Trouka Luis Rums Div-11 about the trouble I'm having with the gangs, Mr. Trouka will not help me at all this "hit is very serious" Mr. Edwards, I need you to call to Div-5 and talk with the Assistant Director Mr. John Maul I have sent this man too letters about this matter, this trouble is making me have ~~a~~ <sup>great</sup> nervous ~~and~~ <sup>Back</sup> down I'm under alot of diseased please Mr. Edwards help me, and I can't even work on this case right because of this gang trouble I'm having, Sir I do know this trouble is going to cause me to go into the hospital, I want to go to trial on 9-17-01 please the phone records of Michael Ostrowski it is in his mother name or father name, "from Aug 28-2000 2 Back one week," my pager number will be on there my pager is 708-266-6781

Mr. Edwards please be here this week I have  
to see you sir, this hit is going to happen  
I'm going to need you to help me suit  
a lawsuit,

I'll be looking for you this week I hope  
and pray by Thursday 9-6-01 thank you very  
much Mr. Edwards.

Miguel Rivera  
20010003412 Div-11-AH-  
PC.

if Mr. John Maul don't help me I have to  
tell the Judge.

law firm Wildman Harrold Allen & Dixon  
225 W. Wacker Drive  
Suite 2800  
Chicago, IL, 60606. please call 312-201-2000  
Miss Lisa S. Simmons  
Chair

↑ This law firm have my  
discovery and my evidence  
letters that the so call  
State witness wrote to me,  
saying that she said the  
truth to the Dets.

I need all 3-phone Records  
from

Rosemary Carson family 630-  
phone Bills from May 2000 554-2897  
to January 3- of 2001

and the phone Records from  
The Mr. & Miss Ostrowski May 2000  
to Aug 28-2000, 6166 N. Sheridan Rd,  
and the phone Records from Chicago

→ Orlando C. Rivera 941-242-2579  
602 SE 13th St. Cape Coral fl.  
33990, ~~the~~ from The Sprint  
phone Co. I use this name to get  
→ The phone turned on ↑  
ON BACK →

here is one of the witness  
for the State Mr. Cornies  
Cornelius, S.S.N. 324-62-8863  
773-238-7496 work 773-274-2500

heres my old attorney  
Mr. Frank D. Edwards  
phone 773-624-0771

and heres my witness name  
Mr. Rick Duffin. he is a attorney  
at law from the law firm  
Jenner & Block - 312-222-9350  
please call him,

EXHIBIT-V-~~19~~19

Letter from

P.D.





Law Office of the  
**COOK COUNTY PUBLIC DEFENDER**

69 West Washington Street • 15<sup>th</sup> Floor • Chicago, IL 60602 • (312) 603-0600

**EDWIN A. BURNETTE • PUBLIC DEFENDER**

November 30, 2004

Mr. Miguel Rivera  
N-23881  
711 Kaskaskia St.  
Menard, Il. 62259

Re: People v. Miguel Rivera  
01-CR-2646  
Post-conviction

Dear Mr. Rivera:

This is to acknowledge receipt of your letter dated November 16, 2004.

1. It is against office policy to make personal phone calls for clients. Accordingly, I will not be making personal calls for you.
2. The only way to get me to have an investigator talk to jurors about something is to tell me what you think the jurors will say, so I can evaluate whether it has legal importance. You did not do this. *SHE Refuse To do!*
3. You mistakenly say that I said I would look into the discovery "and all the police reports and the preliminary reports through the information." I only plan to review what is in the record.

Now - - try again. Write a letter about one thing only. Write to tell me about what you think the two jurors will say and why that is important. Do not write about anything else. I will not read or respond to anything in your letter that is not about those two jurors.

Sincerely,

  
Andrea Monsees  
Assistant Public Defender

*She won't give me the  
discovery or all the police Reports  
that prove my innocence*

Chicago  
Santitas  
350 N. Orleans  
Chicago, IL,  
60650.



Law Office of the  
**COOK COUNTY PUBLIC DEFENDER**

69 West Washington Street • 15<sup>TH</sup> Floor • Chicago, IL 60602 • (312) 603-0600

**Edwin A. Burnette • Public Defender**

July 22, 2004

Mr. Miguel Rivera  
N-23881  
711 Kaskaskia Street  
P. O. Box 711  
Menard, IL 62259

Re: Post-conviction proceedings  
01 CR 2646  
Judge Marjorie Laws Presiding

Dear Mr. Rivera:

This is to acknowledge receipt of your six-page letter dated 7-18-04, and of its enclosed copy of Mr. Richard A. Duffin's letter saying that he will be happy to speak with the person representing you on post-conviction.

Your letter requests a copy of your trial transcripts. The transcript copies in your file were returned to you last week. You should have received them by now. And, you should have received my letter of July 19, 2004, explaining how discovery materials are handled.

As for the other matters you raise in your letter, I address them below.

- \* 1. **Request to talk with jurors:** Sharon Lunn, Jennifer Schumal, Donna Billmeier, Ariele Pachero, Rogelio Rogel.

\* Purpose: They heard Heather Carson say she and her children were not kidnaped. (P. 1 your letter.)

\* Response: This will depend on what the case-review develops. But it is very likely that I will not try to speak with them.

\* Reason: Juries generally are not permitted to impeach their verdicts.

- \* 2. **Request to talk with Ms. Edith Guzman** (no phone number provided) and **Mr. Noel Rivera** (708-222-9600; Realty Adva[n]tage, 6019 West Cermak Rd., Cicero, IL 60804.)

\* Purpose: Ms. Guzman will talk about conversations with trial counsel who said he was not worried about the kidnaping because there was no

kidnaping; Mr. Rivera - no purpose stated. (Pp. 1-2 your letter)

\* Response: This will depend on what the case-review develops.

3. Request to speak with Mr. Rick Duffin 312-207-1000. (Pp. 2 and 3 of your letter)

Response: To be done after case review.

\* 4. Request to speak with Maria Rivera (no number provided. Per file old address 2324 or 2423 S. 58<sup>th</sup> Ave., Cicero, IL 60804)

\* Purpose: She will say that Heather took her to the store and to Miguel's house (presumably in Florida). (pp. 1-2 of your letter.)

Response: 1 you say Maria's social security number is in the file, but I do not see it there;

2. I did get her old address from the file;.

\* 3. Whether I contact her will depend on what the case-review develops.

5. Request to contact Noel Rivera. No number given. *see page 1.*

\* Purpose: A girl who may have been Heather called him to tell him Miguel was in jail. (P. 2 of your letter.)

Response: This will depend on what the case-review develops.

\* 6. Request to contact McNeal Hospital about the doctor Miguel and Heather saw.

\* Purpose: To get information about Heather running back and forth between Miguel and the other man and to learn what Heather said her father did. (P. 3 of your letter.)

Response: For different reasons I expect to attempt this in September or October if there are indeed records of Miguel being treated there.

Reason: If there are records at McNeal that Miguel was treated there we will probably try to obtain them in order to explore Miguel's mental health history.

\* 7. Request to call the Cape Caring Center, Cape Coral, FL. (239) 945-1927.

\* Purpose: They saw Heather 2 or 3 times, she signed some forms, and they helped them with food and clothing.

Response: This will depend on what the case-review develops.

\* 8. Request to review defendant's statement in the police reports.

\* Purpose: Detective. Karen Skepper knew he did not kidnap. But Det. Robert Candle set Miguel Rivera up because of their past. (P. 4 of your letter.)

Response: This will depend on what the case-review develops. The statement may be in the record.

9. Request to review reports at the Cook County Jail on or about 12-10-91 or 12-17-91.

Purpose: To prove Det. Candle set him up.

Response: This will depend on what the case-review develops.

\* 10. Mention of FBI agent Mr. Jeff. No purpose stated. (P. 5 of your letter.)

\* Response: Follow-up will depend on what the case-review develops.

\* 11. Review Heather Carson's statment and police summary reports and general progress reports. (P. 6 of your letter)

Response: This will depend on what the case-review develops.

\* In addition to the above questions about your case, you letter contains some other matters. I will address them here.

A. You say you have been paying other inmates money to help you on your case. (P.2 your letter.)

This is your decision, but I recommend that you not do this. They may be more interested in getting your money than in helping you.

B. You say you want all police reports. (Pp. 4 and 6 back of your letter)

My letter of July 19, 2004 answers this.

C. You ask that I not help the State on your case. (Pp. 4 and 6 back of your letter)

Mr. Rivera, I work for your attorney (the Cook County Public Defender) not for the State's Attorney. Our office has a duty to provide you with reasonable representation. And, within the bounds of our ethical obligations to the court and to opposing counsel, you will receive the

undivided loyalty you have a right to.

- D. You are angry that your trial attorney did not (try to) get you out of jail to visit your mother in the hospital. (P. 4 of your letter)

I sympathize. But that is not what is at stake here.

- \* E. You believe your trial attorney set you up and was purposely ineffective because you got angry with him about not trying to get you to visit your mother in the hospital and because you threatened to sue him if he lost. (Pp. 5 and 6 front of your letter.)

Attorneys are used to hearing jailed clients blow off steam.

- F. You were convicted of aggravated battery, not kidnaping. (P. 5 of your letter)

~~You were also convicted of aggravated kidnaping.~~

- G. You believe there is a gang hit out on you and want to be transferred to witness protection at Illinois River. (P. 6 front of your letter)

1. You should speak with your counselor about receiving proper protection.

- \* 2. I hope what follows will reassure you some. According to the file I was given you first complained about this to your trial attorney while you were awaiting trial. And, thank heaven, you are still here - - alive and kicking. So maybe there is some reason to be optimistic.

- H. You want me to set up a collect call with you. (P. 6 back)

I will do this later, after completing some groundwork in your case.

- I. You are sending the judge a copy of your letter. (P. 6 back)

You should not do that. You have now pretty much locked yourself in on the things you said in the letter.

- \* J. Can I help you find out where your mother is buried. (P. 6 back)

- \* If I come across this information I will get it to you. And I will keep alert to it. But I will not divert office resources to try to find the information.


Our office is moving in August. Once we settle in I will begin reviewing your case. It will

probably take some time to decide what materials I need.

Because of the move we can expect some disruption. To make things as easy as possible, please do not write to me until after August 15, 2004. And, when you do write again, please send mail to the following address:

**Andrea Monsees  
Assistant Public Defender  
Cook County Public Defender's Office, 15<sup>th</sup> Floor  
69 West Washington Street  
Chicago, Illinois 60602**

Sincerely,

  
Andrea Monsees  
Assistant Public Defender

pc. VFRogers, Resources Chief



Law Office of the  
**COOK COUNTY PUBLIC DEFENDER**

69 W. WASHINGTON • 16<sup>TH</sup> FLOOR • CHICAGO, IL 60602 • (312) 603-0600

Edwin A. Burnette • Public Defender

May 17, 2005

Mr. Miguel Rivera  
P.O. Box 112  
Joliet, IL 60434

Re: *People v. Miguel Rivera*  
01 CR 2646  
Collateral Review  
Hon. Marjorie Laws, Judge Presiding

Dear Mr. Rivera:

Thank you for your letter dated May 10, 2005. The next date in your case is May 31, 2005. We have subpoenas out to the Social Security Administration and to the Illinois Department of Corrections that we hope to have returned on that date.

I am glad you are seeing a doctor and getting therapy to help you. I will write to you again after the next court date.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea Monsees".

Andrea Monsees  
Assistant Public Defender

pc H. Winston, LRD Supervisor

*She Refuse To get Heather  
S.S.I. Records  
Federal L.G.,*



# EXHIBIT-X-20

Letters from Attorneys  
Law Offices Refusing  
To take My Case, without  
Court ordered them,  
Plaintiff seeking Attorneys  
To help, due to P.D.O. Acting  
under color.



LAW OFFICES OF  
Allan A. Ackerman, P.C.

MR. ALLAN A. ACKERMAN

2000 North Clifton Avenue  
Chicago, Illinois 60614

Telephone: (312) 332-2891  
FAX: (773) 871-3304

June 23, 2003

Miguel Rivera  
N 23881  
P.O. Box 99  
Pontiac, IL 61764

Dear Mr. Rivera:

Thank you for your recent letter asking that I become involved in your probable post-conviction petition(s).

According to your letter, you did not commit the kidnapping offenses involved in your trial and conviction. Your letter indicates that you have legal papers and trial transcripts along with other materials which will support your actual innocence and the fact that your trial lawyer was "ineffective."

At this time I cannot become further involved in any "pro bono" cases, however if you find that your family or friends are in a position to afford my services, I would certainly be interested in attempting to secure your freedom through the Illinois post-conviction process.

I am returning the letter from Mr. Duffin because I assume you have no copy.

Very best of luck to you.

Very truly yours,

Allan A. Ackerman

AAA/jl  
Enclosure

*Tom, will you call for me  
tell him can he send me  
a letter at menard C.C. P.O. Box  
711. Menard, IL, 62259,  
or call here!*

*← Tell him!*

*please send this letter back to  
me. when you talk to him.*

*To see how much he is  
asking me for to take my case. please  
tell him I don't have no family and I  
don't have \$10,000 or \$8,000 dollars, all I need  
is a new trial, and the police reports  
he will see I am innocence! Please Tom  
get back with me on this letter ok!*

THE  
ROGER  
BALDWIN  
FOUNDATION  
OF ACLU,  
INC.

Suite 2900  
180 North Michigan Avenue  
Chicago, Illinois 60601-1207  
(312) 261-9240  
Fax (312) 261-9759  
www.rbf.org



2/2/2004

Mr. Miguel Rivera  
Menard C.C.  
PO Box 711 #N-23881  
Menard, IL 62259

Dear Mr. Rivera,

Thank you for your recent inquiry. We have carefully reviewed the information that you have sent.

Unfortunately, the ACLU is unable to assist you. Each month our office receives hundreds of letters from prisoners seeking aid. We can only accept a small percentage of these requests due to our severely limited resources.

If you wish assistance in filing your own complaint or lawsuit, you can contact the prisoners Correspondence Office at the address below. Their office provides NO LEGAL ADVICE; they provide information on the proper format for filing.

Prisoners Correspondence Office  
Clerks Office  
219 South Dearborn St.  
Chicago, IL 60604

Also, the Chicago Bar Association has a lawyer referral service. Their number is 312-554-2001. (Outside of Chicago, the Illinois Bar Association's number is 217-525-5297).

Please accept our regrets that we cannot help.

Sincerely,

Intake Office  
ACLU of Illinois

Medill School of Journalism  
Northwestern University

Medill

August 22, 2002

Mr. Miguel Rivera  
N-23881  
P.O. Box 711  
Menard, IL 62259

Dear Mr. Rivera,

Thanks for responding to my students' request for information regarding your case. I only get involved in cases of homicide, so I will not be able to investigate your situation. I suggest that you try writing to the Center on Wrongful Convictions, which is through the Northwestern University Law School. The address is:

Center on Wrongful Convictions  
Northwestern University School of Law  
357 East Chicago Ave.  
Chicago, IL 60611

*I wish you the best of luck in your quest for justice.*

David Protess

Program Director, Medill Innocence Project

# PRAIRIE STATE LEGAL SERVICES, INC.

Linda A. Rothnagel  
Managing Attorney

Lake County  
(847) 662-6925

325 W. Washington Street  
Suite 100  
Waukegan, Illinois 60085

McHenry County  
(800) 942-3940

Lawrence E. McShane  
Paralegal

Lawrence W. Smith  
Marcia Sasaki Pierce  
Harold L. Goldman  
Aaron E. Baker  
Mary Jo Powrozek  
Joyce A. McGee  
John M. Quintanilla  
Attorneys

Fax  
(847) 662-6986

TDD  
(847) 662-4441

November 4, 2002

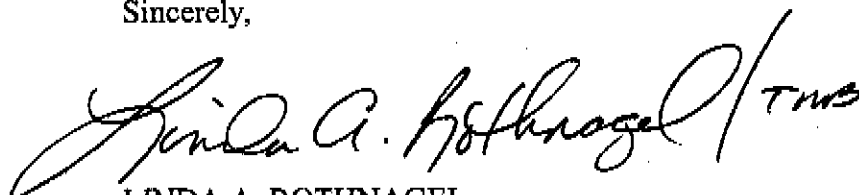
Miguel Rivera #N-23881  
Pontiac Correctional Center  
P.O. Box 99  
Pontiac, IL 61764

Dear Mr. Rivera:

I received your letter dated October 30, 2002. Our office receives funding from the federal government. The federal government puts conditions on what work we are permitted to do. One of the restrictions placed by the federal government is that we cannot represent persons who are incarcerated in any prison or jail.

For this reason, I am returning your letter to you. I have not kept a copy and have not read all of it. When you are released from jail, you are welcome to apply for our services by calling our telephone intake and advice service at (847) 662-6925 or 1-800-942-3940. When you hear the recording, press "1" to speak to an attorney. The telephone counseling service hours are 9:05 - 11:45 a.m. and 1:05 - 4:00 p.m., Monday through Friday.

Sincerely,



LINDA A. ROTHNAGEL  
Attorney at Law

LAR:tmb

Enclosure

EXHIBIT # ~~22~~ 23

A Letter From  
The Public defenders offices  
After #17-to 18-Months Later  
AND P.D. Ms. A. Monsees,  
AND P.D. Harold J. Wintson,  
ALL ~~then~~ knew where I was  
Transferred to...

I, MIGUEL RIVERA, HAVE NOT  
Received a copy of Her Motion,  
AND This is The ONLY Letter From  
said P.D. Attorney: Ms. Lynn, F. Wilson.  
and ON May 16<sup>th</sup>. 2008. MR. M. Rivera did  
Received P.D. Ms. Lynn, F. Wilson, Motion  
To ~~not~~ withdraw,



Law Office of the  
**COOK COUNTY PUBLIC DEFENDER**

69 W. WASHINGTON • 15<sup>TH</sup> FLOOR • CHICAGO, IL 60602 • (312)603-0600

Edwin A. Burnette • Public Defender

June 11, 2008

Miguel Rivera  
No. 64650  
Central New Mexico Correctional Facility  
Los Lunas, NM 87031

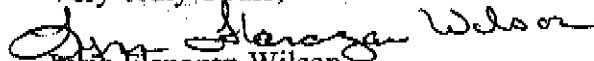
Re: Appeal No. 06-2788

Dear Mr. Rivera:

This letter is regarding the status of your request to be transferred to Illinois due to your health. As I told you in my letter of June 9, 2008, that I again called Ms. Funk of the Office of Transfer Coordinator, Illinois Department of Corrections to find out the status of your request to be transferred. Ms. Funk left me a message stating that she put in another call to New Mexico to find out what your medical complaints are but have yet to receive a response. She has also put in a call to the medical director. She stated that she will contact me when she receives a response. When I hear from her I will contact you and let you know the status.

As always, I am available for phone calls between the hours of 9:30 a.m. and 12:30 p.m. Please feel free to call.

Very Truly Yours,

  
Lynn Flanagan Wilson,  
Assistant Public Defender

cc: H. Winston



Law Office of the  
**COOK COUNTY PUBLIC DEFENDER**

69 W. WASHINGTON • 16<sup>TH</sup> FLOOR • CHICAGO, IL 60602 • (312)603-0600

Edwin A. Burnette • Public Defender

May 8, 2008

Miguel Rivera  
No. 64650  
Central New Mexico Correctional Facility  
Los Lunas, NM 87031

Re: Appeal No. 06-2788

Dear Mr. Rivera:

After a through analysis of the transcripts in your case, it is my determination that there are no meritorious issues to be raised on appeal. As a result, I will be filing a motion to withdraw as counsel. If it is your opinion that there are issues to be raised, you may file your own response.

I have also received a phone message from you requesting that I call you. However, you failed to leave a number. Also, all the mail I sent to you was returned because I was not aware that you changed facilities. Please keep me informed as to your location.

I have also learned, from Mr. Winston, of your medical problems. I tried calling Mr. Chavez, as you stated in your letter, but was not able to get in contact with him. I also tried calling Dr. Campbell and was unable to get in contact with him. On May 6, 2008, I fax a letter to Warden Garcia requesting that you be allowed to call and have had no response.

Additionally, in the future please do not send any more of your blood via the mail. In case you did not know that is **not sanitary**.

As always, if you have any questions please feel free to write or call me between the hours of 9:30 a.m. and 12:30p.m.

Very Truly Yours,

A handwritten signature in cursive script, reading "Lynn Flanagan Wilson".  
Lynn Flanagan Wilson  
Assistant Public Defender



No. 06-2788

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

PEOPLE OF THE STATE OF ILLINOIS

Respondent-Appellee,

-vs-

MIGUEL RIVERA,

Petitioner-Appellant.

)  
) Appeal from the Circuit  
) Court of Cook County,  
) Criminal Division.  
) 01 Cr 2646  
)  
)  
) Honorable  
) Majorie Laws,  
) Judge Presiding.

---

**MOTION TO WITHDRAW AS APPOINTED COUNSEL**  
**PURSUANT TO PENNSYLVANIA V. FINLEY**

Now comes the Petitioner's counsel, **Edwin A. Burnette**, Public Defender of Cook County, Illinois, through his assistant, **LYNN FLANAGAN WILSON**, Assistant Public Defender, and respectfully moves this Honorable Court for leave to withdraw as counsel on appeal in this case.

In support of this motion, movant states as follows:

1. Petitioner have appealed from the order of Judge Laws denying his pro-se petition for post-conviction relief. The Office of the Cook County Public Defender was appointed as counsel on appeal.
2. A thorough analysis of the record has resulted in the determination by counsel that there are no meritorious issues to be raised on review.
3. Pursuant to the requirements of Pennsylvania v. Finley, 95 L.Ed.2d 539, 107 S.Ct. 1990 (1987) and in accordance with the presently accepted practices and procedures of the First

District Appellate Court and the Office of the Cook County Public Defender, a brief is being submitted in support of the motion to withdraw as counsel.

4. A copy of this motion and supporting brief will be sent to the petitioner at his current address.

WHEREFORE, counsel respectfully requests this Honorable Court, for the reasons expressed herein and in the attached brief, grant the motion allowing the Office of the Cook County Public Defender to withdraw as appointed counsel on appeal in this case.

Respectfully submitted,

EDWIN A. BURNETTE  
Public Defender of Cook County

By   
LYNN FLANAGAN WILSON  
Assistant Public Defender

STATE OF ILLINOIS     )  
                                      ) SS  
COUNTY OF COOK        )

**AFFIDAVIT**

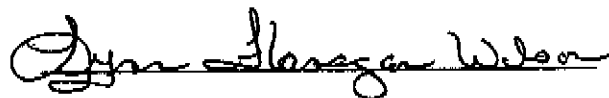
**LYNN FLANAGAN WILSON**, being first duly sworn on oath, deposes and states:

1. I am an attorney in the Legal Resource Division of the Cook County Public Defender's Office;

2. I was assigned to represent Miguel Rivera in the instant appeal No.06-2788. In that capacity, I have prepared the motion to withdraw as appointed counsel for petitioner. I have read the record filed in this case and have determined there is no merit to any issue in this appeal. In support of the motion and that conclusion, I have prepared the brief accompanying this filing.

3. I have assured that petitioner is sent a copy of this motion and the supporting brief on which the request to withdraw is based.

4. I offer this affidavit in further support of the motion to withdraw as appointed counsel on appeal.



**LYNN FLANAGAN WILSON**  
Assistant Public Defender

SUBSCRIBED and SWORN TO

Before me this 17<sup>th</sup> day

of May, A.D., 2008.



NOTARY PUBLIC

OFFICIAL SEAL  
ANN T. ROWSTON  
NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 6-9-2008

No. 06-2788

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the Circuit
	)	Court of Cook County,
Respondent-Appellee,	)	Criminal Division.
	)	01CR2646
-vs-	)	
	)	
MIGUEL RIVERA,	)	Honorable
	)	Marjorie Laws,
Petitioner-Appellant.	)	Judge Presiding.

NOTICE OF MOTION

TO: Richard Devine	Miguel Rivera
State's Attorney	No. 64650
309 Daley Center	Central New Mexico Correctional Facility
Chicago, IL 60602	Los Lunas, NM 87031

PLEASE TAKE NOTICE THAT on MAY 14, 2008, I shall cause to be filed in the Office of the Clerk of the Appellate Court of Illinois, First District, the attached Motion and Affidavit.

**EDWIN A. BURNETTE**  
Public Defender of Cook County

By: Lynn Flanagan Wilson  
**LYNN FLANAGAN WILSON**  
Assistant Public Defender

STATE OF ILLINOIS )  
                                  ) SS  
COUNTY OF COOK )

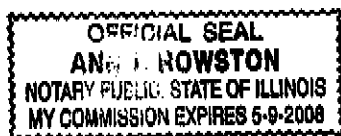
Lamont W. James, being duly sworn on oath, says that he served the above and foregoing Notice and Motion and Affidavit by delivering same to the above-mentioned attorney, and mailing same to defendant on MAY 14, 2008.

Lamont W. James II

SUBSCRIBED and SWORN TO  
Before me this 14 day  
of May, A.D., 2008.

Received by:  
Date:

Orlan T. Roustan  
NOTARY PUBLIC



No. 06-2788

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

PEOPLE OF THE STATE OF ILLINOIS

Respondent-Appellee,

-vs-

MIGUEL RIVERA,

Petitioner-Appellant.

) Appeal from the Circuit  
) Court of Cook County,  
) Criminal Division.  
) 01 Cr 2646

) Honorable  
) Marjorie Laws,  
) Judge Presiding.

---

**BRIEF IN SUPPORT OF MOTION TO WITHDRAW**

---

In support of the motion to withdraw as appointed counsel, EDWIN A. BURNETTE, Public Defender of Cook County, through LYNN FLANAGAN WILSON, Assistant Public Defender, submits the following brief revealing the lack of appellate issues present in this cause.

**STATEMENT OF FACTS**

Following a jury trial, the petitioner, Miguel Rivera, was found guilty of three counts of aggravated kidnaping and one count of aggravated battery. ( R. N-3) He was sentenced to concurrent 40 year terms for the aggravated kidnaping and a concurrent term of five years for aggravated battery. ( R. N-4) On appeal, the appellate court affirmed the trial court's order (1-02-0699). ( R. N-4)

Subsequently, Rivera filed a pro-se Post-Conviction petition. ( R. N-4) In the petition, Rivera alleged ineffective assistance of counsel, that his extended term sentence was unconstitutional, and that the extended term statute was unconstitutional. ( R. N-5) Counsel was appointed and filed two supplemental petitions. On July 27, 2005, Rivera's post-conviction attorney filed the first supplemental petition. ( C. L. 127) In the supplemental petition, counsel alleged that because Rivera's jury was not instructed on the lesser included offense of unlawful restraint, he did not receive a fair trial and that his trial counsel and appellate counsel was ineffective. (C. L. 127-130) On March 9, 2006, counsel filed the second supplemental petition.

(C. L. 40-73) In the petition, counsel maintained constitutional errors arising from the failure to inquire into Rivera's fitness for trial and sentencing, the failure to use his mental disability as grounds to challenge the mens rea of the offenses, and/or as grounds for an insanity defense, and the failure of trial and appellate counsel to challenge imposition of an extended term sentence.

(C. L. 40-73) On June 29, 2006, the State filed a Motion to Dismiss the Petition.

Following a hearing on the motion, the trial court dismissed the petition. Rivera now appeals the dismissal of his petition.

### **ARGUMENT**

#### **NO ERROR OCCURRED IN THE JUDGE'S DECISION DISMISSING THE POST- CONVICTION PETITION**

In his petitions for post-conviction relief, Rivera alleged that his extended term sentence and the extended term statute was unconstitutional, the jury was not instructed on the lesser included offense of unlawful restraint therefore he did not receive a fair trial, trial counsel was ineffective due to his failure to inquire into his fitness for trial and sentencing, and failure to use his mental disability as grounds to challenge the mens rea of the offenses, and/or as grounds for an insanity defense, and the failure of trial and appellate counsel to challenge the imposition of an extended term sentence.

The Post-Conviction Hearing Act provides a remedy to criminal defendants who claim that substantial violations of their constitutional rights occurred in their trial. (*People v. Eddmonds* 143 Ill. 2d 501, 578 N. E. 2d 952 (1991)) The purpose of the post-conviction proceeding is to permit inquiry into the constitutional issues involved in the original conviction that have not been and could not have been adjudicated on direct appeal. (*People v. Eddmonds* 143 Ill. 2d 501, 578 N. E. 2d 952 (1991)) A defendant is not entitled to an evidentiary hearing on his post-conviction petition as a matter of right. An evidentiary hearing is warranted only where the allegations of the post-conviction petition, supported where appropriate by the trial record or accompanying affidavits, make a substantial showing that a defendant's constitutional rights have been violated. (*People v. Haynes* 192 Ill. 2d 437 737 N. E. 2d 169 (2000)) In determining whether

to grant an evidentiary hearing, all well pleaded facts in the petition and accompanying affidavits are taken as true. (*People v. Haynes* 192 Ill. 2d 437 737 N. E. 2d 169 (2000)) This court review a trial court's determination regarding the sufficiency of the allegations contained in a post-conviction petition de novo.

At the hearing on the State's Motion to Dismiss, it was conceded that the Apprendi issue raised in Rivera's pro-se petition did not apply. ( Supp. R. N-18) However, post-conviction counsel did maintain and argue that Rivera's trial counsel was ineffective for failing to address Rivera's mental health issues. Supposedly, there was bona fide doubt as to whether Rivera was fit for trial. In support of this contention, attached to the petition was an Illinois Department of Corrections educational evaluation that equates his educational achievement with that of a 4<sup>th</sup> grader, Social Security Administration Records indicating that he receive benefits between the period of 1999-2001, the pre-sentence investigation which indicated that he informed the Court's probation officer of his disability arising from depression, and Illinois Department of Corrections records demonstrating that he needed psycho tropic medications and had repeatedly been diagnosed as mentally ill.

To succeed on a sixth amendment claim of ineffective assistance of counsel, you must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. (*People v. Strickland* 466 U.S. 668, 104 S. Ct. 2052 (1984)) A reasonable probability means a probability sufficient to undermine confidence in the trial's outcome. (*People v. Strickland* 466 U.S. 668, 104 S. Ct. 2052 (1984)) You must satisfy both prongs of the test. Failure to satisfy both prongs precludes an ineffective assistance finding. To establish that his trial counsel's alleged incompetency prejudiced him within the meaning of Strickland, defendant must show that facts existed at the time of trial that would have raised a bona fide doubt of his ability to understand the nature and purpose of the proceedings and to assist in his defense. (*People v. Easley* 192 Ill. 2d 307, 736 N. E. 2d 975 (2000)) The defendant is entitled to post-conviction relief on his post-conviction claim only if he shows that the trial court would have found a bona fide doubt of his fitness and ordered a fitness hearing if it had been

appraised of the evidence now offered. Since Rivera's post-conviction petition was dismissed without an evidentiary hearing, the critical inquiry is whether the facts presented in his post-conviction petition raised a bona fide doubt of his fitness to stand trial. People v. Easley (192 Ill. 2d 307, 736 N. E. 2d 975 (2000))

In the instant case, none of Rivera's supporting documentation raise a bona fide doubt as to his fitness to stand trial. The mere fact that Rivera suffers from mental disturbances or requires psychiatric treatment does not necessarily raise a bona fide doubt of his ability. (People v. Easley 192 Ill. 2d 293, 736 N.E. 2d 975 (2000)) Nor does an Illinois Department of Corrections educational evaluation that equates his educational achievement with that of a 4<sup>th</sup> grader or Social Security Administration Records indicating that he receive benefits between the period of 1999-2001. Relevant factors which a trial court may consider in assessing whether a bona fide doubt of fitness exists include a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial. (People v. Easley (192 Ill. 2d 307, 736 N. E. 2d 975 (2000)) Also, the representations of defendant's counsel concerning the competence of his client, while not conclusive, are another important factor to consider. The issue is whether defendant could understand the proceedings and cooperate with counsel. Here, there was no documentation as to whether Rivera could understand the proceedings and cooperate with his counsel.

Given the above, Rivera's post-conviction petition failed to raise a bona fide doubt of his fitness to stand trial. The petition also failed to establish that his counsel was ineffective.

In his petition, Rivera also maintain that he did not receive a fair trial because the jury was not instructed on the lesser included offense of unlawful restraint.

A defendant is entitled to a lesser-included offense instruction only if the evidence at trial is such that a jury could rationally find the defendant guilty of the lesser offense, yet acquit him of the greater. (People v. Medina (221 Ill. 2d 394, 851 N.E. 2d 1220 (2006)) That evidentiary requisite must be met before a right to have the jury instructed on a lesser-included offense arise. People v. Medina (221 Ill. 2d 394, 851 N.E. 2d 1220 (2006))



In support of his petition, Rivera cite People v. Brocksmith (162 Ill. 2d 224, 642 N.E. 2d 1230 (1994)). In Brocksmith, the Illinois Supreme Court held that a defendant had the exclusive right to decide whether to submit an instruction on a lesser-included offense at the conclusion of the evidence.

Although, unlawful restraint is a lesser included offense of aggravated kidnaping, in this case, Rivera would not have been entitled to a lesser-included offense instruction. According to the "Motion Requesting Leave To File...First Supplemental Post-Conviction Petition" the defense theory was that the victim voluntarily took her children and accompanied Rivera to first a local motel and then Florida where they lived as a family. (C.L. 128) The defense theory was this was a case of "love gone wrong". ( C.L. 127) The petition states that Rivera and the victim had a "tempestuous and tumultuous relationship" which cause the victim to leave for a couple of days. ( C.L. 127) The victim and her children went to stay with Michael Ostrowski. (C.L. 127) Supposedly, the victim later requested that Rivera pick her and the children up. When Rivera complied, a fight ensued between he and Ostrowski. ( C.L. 128) Based upon the defense theory, the victim consented to her and her children accompanying Rivera. If the defense theory had been believed Rivera could not have been found guilty of unlawful restraint. He would have simply been found not guilty. Therefore, he was not entitled to a lesser included offense instruction,

For the foregoing reasons, the judge's decision was an appropriate exercise of his discretion, it cannot be contended on appeal that the ruling was in error. Therefore, there is no argument which now may be made for the petitioner in this appeal.

**CONCLUSION**

WHEREFORE, Edwin A. Burnette, Public Defender of Cook County, through Lynn Flanagan Wilson, Assistant Public Defender, respectfully requests this Honorable Court, for the reasons expressed herein, grant the motion to withdraw as counsel for petitioner on appeal.

Respectfully submitted,

**EDWIN A. BURNETTE**

Public Defender of Cook County  
69 W. Washington, 15th Floor  
Chicago, IL. 60602  
(312) 603-0600

**Counsel for Appellant.**

**LYNN FLANAGAN WILSON**  
Assistant Public Defender

**Of Counsel.**

ORDER  
06-2788

IN THE APPELLATE COURT, STATE OF ILLINOIS  
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS	) Appeal from the Circuit
	) Court of Cook County,
Respondent-Appellee,	) Criminal Division.
	) 01 Cr 2646
-vs-	)
	)
MIGUEL RIVERA,	) Honorable
	) Thomas Tucker,
Petitioner-Appellant.	) Judge Presiding.

**ORDER**

This cause coming to be heard on motion of petitioner-appellant, Miguel Rivera , and the Court being fully advised in the premises, IT IS HEREBY ORDERED counsel's motion to withdraw as appointed counsel in the above-entitled cause pursuant to Pennsylvania v. Finley is taken under advisement.

LYNN FLANAGAN WILSON  
Assistant Public Defender

EDWIN A. BURNETTE  
Public Defender of Cook County

Attorney for Petitioner-Appellant

Address: 69 West Washington-15th Floor

City: Chicago, Illinois 60602

Telephone: (312) 603-0600

\_\_\_\_\_  
JUSTICE

\_\_\_\_\_  
JUSTICE

\_\_\_\_\_  
JUSTICE

\_\_\_\_\_  
STEVE RAVID, CLERK OF THE APPELLATE COURT, FIRST DISTRICT  
\_\_\_\_\_

*Ilene Lin Bloom*  
**WINSTON & STRAWN**

43 RUE DU RHONE  
1204 GENEVA, SWITZERLAND

444 SOUTH FLOWER STREET  
LOS ANGELES, CALIFORNIA 90071-2811

200 PARK AVENUE  
NEW YORK, NEW YORK 10166-4193

WRITER'S DIRECT DIAL NUMBER

35 WEST WACKER DRIVE  
CHICAGO, ILLINOIS 60601-9703

(312) 558-5600

FACSIMILE (312) 558-5700

[www.winston.com](http://www.winston.com)

21 AVENUE VICTOR HUGO  
75116 PARIS, FRANCE

1400 L STREET, N.W.  
WASHINGTON, D.C. 20005-3502

April 6, 2001

Mr. Miguel Rivera  
#ID 200001003412  
Cook County Jail  
Div. #11-~~11~~  
P.O. Box 089002  
Chicago, Illinois 60608

*accept  
Collep  
Colloice*

Dear Mr. Rivera:

I recently received the letter you sent to Alene Shafnisky about your need for legal assistance. Unfortunately, we are not able to assist you at this time.

Winston & Strawn wishes you the best of luck in the future.

Sincerely,

*Ilene Lin Bloom*  
Ilene Lin Bloom

ILB:lhz

**JENNER & BLOCK**

November 18, 2002

Jenner & Block, LLC  
One IBM Plaza  
Chicago, IL 60611-7603  
Tel 312 222-9350  
www.jenner.com

Chicago  
Dallas  
Washington, DC

Mr. Miguel Rivera  
#N23881  
P.O. Box 99  
Pontiac, IL 61764

Dear Rivera:

Thank you for your letter requesting pro bono representation. After carefully reviewing your request, we have determined that we will not be able to undertake the representation you are seeking.

Each year we receive hundreds of requests for pro bono representation. Each request is examined on a case-by-case basis according to various criteria, including geographical location, jurisdiction, conflict of interest, etc. Unfortunately, because of the tremendous volume of requests we receive, we are simply not able to undertake each one — regardless of merit.

We have included a list of other Chicago area firms offering pro bono representation to assist you in your pursuit of legal representation.

Sincerely,



Barry Levenstam  
Co-Chair, Pro Bono Committee

Encl.  
BL:kw

*they said NO (4) times  
and they won't tell me where  
my witness is Mr. Rick Duffin  
he is a Attorney here at J & B, LLC.*



STATE OF ILLINOIS  
JUDICIAL INQUIRY BOARD

Kathy D. Twine, Esq.  
*Executive Director  
General Counsel*

100 West Randolph Street  
Suite 14-500  
Chicago, Illinois 60601-3233  
312/814-5554  
800/227-9429  
TDD 312/814-1881  
FAX 312/814-5719

Underman, Esq.  
Markhurst, Esq.  
nderick J. Kapala  
E. Kreisler  
W. Landsberg, Esq.  
na H. Mazur  
Michael J. Murphy  
Michael Pittman  
ristine I. Takada

June 26, 2003

Mr. Miguel Rivera  
N-23881  
Pontiac Correctional Center  
P.O. Box 99  
Pontiac, IL 61764

Dear Mr. Rivera:

Please be advised that we are unable to process your request for an investigation because the judge that you complained about is no longer an active member of the judiciary. Kindly note that the Judicial Inquiry Board only has jurisdiction over active Illinois State court judges.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kathy D. Twine".

Kathy D. Twine  
Executive Director &  
General Counsel

KDT:vp

STATE OF ILLINOIS

) SS

COUNTY OF \_\_\_\_\_

AFFIDAVIT

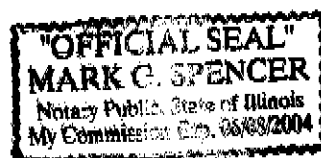
I, Miguel Rivera #N-23881, being first duly sworn upon my oath depose and state that the following matters are both true and correct Made upon personal knowledge and belief and if called as a witness I am competent to testify thereto: I submit this Affidavit as

Exhibit # 1 to the Trial Judge in Case 01-CR-02646  
order, a pre-sentences investigation, the in-  
vestigator lied on the defendant. That I  
have a good, and that I never worked she  
couldn't find none of my job's. here is legal  
prove I worked at the time of the ag-  
Battery happen the discovery prove. The  
Chicago-Lites went to my job-city transfer co,  
and here's legal prove I worked in florida  
under my name Miguel Rivera, at the same  
address and apt. Heather, carson, lived at 602 Se-  
13th St Cape Coral, FL 33990-0001 please check her  
Social Security Records. we're she called them  
to transfer her S.S. checks to this address,  
and I ask that this court investigate -  
mine to, that's not No kidnapping at all,

for Relief. I ask for a new trial with an investigation due to  
my innocence or to be acquitted of this wrongful conviction of aggravated  
kidnapping.

Subscribed and sworn to  
 before me on the 3<sup>rd</sup> day  
of April, 2012

Respectfully submitted,

Miguel Rivera #N-23881



5(PERMANENT)

Page 1 of 1 Pages

NOTICE OF OVERPAYMENT - CASH

JUL 05 2001

Miguel Rivera  
Cook County Dept of Corr  
Dv 5 Administration  
Chicago, IL. 60608

03-229-D90979  
356314  
Claim 2

\*Date of Notice: 08/18/01

Account Number: 356314

03-229-00090979//929

You received a cash overpayment of \$ 388.72 from the Department of Human Services. This overpayment of assistance occurred because YOU FAILED TO REPORT YOUR EARNINGS FROM YOUR EMPLOYMENT WITH CITY TRANSFER CO INC WHICH BEGAN IN AUGUST 2000

YOU ARE RESPONSIBLE FOR REPAYING THIS CASH OVERPAYMENT.  
The following computation explains how the amount of your overpayment was determined.

Cash Received	- Correct Cash Amount	= Overpayment	- Support Payment	= Adjusted Overpayment	Months	X Number of Months	= Net Overpayment
\$ 219.96	\$ .00	\$ 219.96	\$ .00	\$ 219.96	08/00 thru 08/00	1	\$ 219.96
\$ 168.76	\$ .00	\$ 168.76	\$ .00	\$ 168.76	09/00 thru 09/00	1	\$ 168.76

Total Grant Assistance Overpayment for this page \$ 388.72

YOUR TOTAL GRANT OVERPAYMENT AMOUNT \$ 388.72

*The defendant was even working for  
Haworth construction, inc.  
8056 pelican Road in fort Myers, fl 33912  
My Boss name is Tim, 941-940-6205*

\*SEE ATTACHED FORM FOR IMPORTANT APPEAL INFORMATION





### NATURE OF THE CASE

Miguel Rivera was charged with attempt first degree murder, aggravated battery, and the aggravated kidnaping of three individuals. After a jury trial he was found not guilty of attempt first degree murder, but guilty of aggravated battery and three counts of aggravated kidnaping. The Honorable Edward M. Fiala sentenced Rivera to three concurrent extended terms of 40 years imprisonment for the aggravated kidnaping convictions, and a concurrent term of 5 years for aggravated battery.

### ISSUE PRESENTED FOR REVIEW

Whether the trial court's failure to further investigate the defendant's post-trial assertions of ineffective assistance of counsel and/or appoint new counsel was manifestly erroneous given that the allegations, if true, at a minimum suggested "possible neglect" of defendant's case?

### JURISDICTION

This is a direct appeal from the judgment of the court below under Illinois Supreme Court Rule 602. The order of sentence was issued on January 17, 2002. (C.L. 141) Notice of appeal was timely filed on February 14, 2002. (C.L. 144)

STATEMENT OF FACTS

Miguel Rivera was charged with attempt first degree murder, aggravated battery, and the aggravated kidnaping of Heather Carson, Isaiah Ostrowski, and Nicholas Carson. After a jury trial he was found not guilty of attempt first degree murder, but guilty of aggravated battery and three counts of aggravated kidnapping. The Honorable Edward M. Fiala sentenced Rivera to three concurrent extended terms of 40 years imprisonment for the aggravated kidnapping convictions, and a concurrent term of 5 years for aggravated battery.

Miguel Rivera was the father of Heather Carson's 13 month-old son, Alonzo. Heather also had two sons with Michael Ostrowski - Isaiah, age 3, and Nicholas, age 2. (II, R. B41-42) Heather had an unsteady, argumentative relationship with Ostrowski. (II, R. B30) In February of 1999, while Heather was pregnant with Nicholas, she and Isaiah moved in with Miguel. (II, R. B43) Heather testified that although Miguel was "real good to my sons," he frequently beat her. Heather loved Miguel. (II, R. B44, B46) Heather and the kids lived with Miguel until approximately August 26, 2000. Miguel financially supported Heather, Isaiah, and Nicholas (after he was born) the entire time that they lived with him. (II, R. B33) Heather was pregnant with Alonzo at this time. She had tired of the beatings and discovered that Miguel had cheated on her. So she and the kids moved into Ostrowski's condominium. (II, R. B15, B44)

On August 28<sup>th</sup>, 2000, at approximately 5:00 a.m., Ostrowski left for work. Heather and the kids were asleep in the house. (II, R. B16) Ostrowski ran into Miguel just outside the condominium complex. Miguel asked if he could see Heather. He said that he had a gun. Ostrowski walked peacefully with Miguel up to the apartment. There was no altercation or argument between the two. (II, R. B17-18; B23; B123; B133)

Ostrowski asked Miguel to wait at the door. As Ostrowski went up the stairs, Miguel followed behind him. Ostrowski felt a "punch" in his back. (II, R. B17-19; B23) He went into the bedroom where Heather and the kids were sleeping. Miguel followed him in. Ostrowski then felt a "stab" in his chest. He backed away from Miguel. (II, R. B20)

Miguel asked Heather if she had been having sex with Ostrowski. Heather said she had not and started to cry. Miguel slapped her. The children woke up and also started to cry. (II, R. B21, B50-52) Heather calmed Miguel down and told him that she "loved him" and "would go home" with him. (II, R. B51) Miguel, Heather, and Ostrowski walked into the foyer to talk so the kids would not hear them. (II, R. B52)

At this time, Ostrowski realized he had been stabbed. He exited out the back door and down to the lobby. (II, R. B22, B53) On his way out of the building, he told the doorman that Miguel had a knife and a gun, though Ostrowski admitted he never saw a gun. He walked over to another building. A security guard called paramedics. The police were also notified. Ostrowski was taken to the hospital. He had wounds in his chest and back "stitched." The police did not see any blood in Ostrowski's apartment. (II, R. B22-24; B35; B111-114; B117; B124-125) Ostrowski estimated that the size of the knife's blade was about 5-6 inches. (II, R. B24-25)

Up in the apartment, Miguel asked Heather to come back home with him. Heather refused. Miguel grabbed her hair. He "took" Nicholas and threatened to kill him. It was at this time that Heather first saw Miguel in possession of a "little knife." Miguel held the knife at Nicholas' throat. Miguel, Heather, Isaiah, and Nicholas left the building; Heather was screaming and the baby was crying. Heather and Miguel were walking "arm in arm." Heather testified that she went with Miguel only to protect her children. Yet she admitted that she did not believe Miguel would hurt the

children because he loved them too much. (II, R. B54-56; B81; B127-128; B134) She also admitted that she was "emotionally confused" throughout these events. (II, R. B94, B98)

Heather sat in the back seat of Miguel's car with Nicholas on her lap; Miguel sat in the driver's seat and Isaiah in the front passenger seat. Miguel drove to an alley. He again asked Heather whether she had sex with Ostrowski. He then put his finger inside her vagina. Miguel told her that he wouldn't hurt her anymore, that he just wanted to be with his child. (II, R. B57-58)

\* According to Heather, when they reentered the car, Miguel pulled a pair of gloves from under the dashboard and wiped off the knife. He then allegedly threw the knife and gloves over the fence of the cemetery. (II, R. B59) However, on cross-examination Heather denied ever seeing this happen. \*  
(II, R. B90)

Heather admitted she called detectives later that day and never said anything about a knife, a kidnapping, or even being in fear for herself or her family. (II, R. B89) In fact, Heather admitted she told the police she was "fine." (II, R. B61) That night they stayed in a motel in Cicero. Miguel "shoved" Heather's shoulder and told her that if she left him, he would kill himself. (II, R. B93-94)

Over the next few days, Miguel, Heather, and the kids drove together down to Florida. They lived together there for four months. Miguel worked and supported Heather and the children during this time. After the birth of the new baby, they "lived as a family." Miguel even sold his blood to support the family. However, Heather claimed that she only stayed with Miguel because she "feared for me and my family." (II, R. B62; B84-85)

Heather admitted that she never called the police during the four months she was in Florida with Miguel. (II, R. B86) After Miguel was arrested and brought back to Chicago, Heather wrote him "a lot" of letters and visited him in jail. (II, R. B86-87, 91)

Heather admitted that as a teenager she was diagnosed as suffering from bipolar disorder. When she was a teen she took some medication, but had since gone unmedicated until four months before trial. Heather stated that the disorder caused her to vacillate between pronounced sadness and pronounced happiness. She said that her sickness contributed to her tumultuous relationship with Miguel. She admitted that she had Miguel arrested while they were together, but later went to court and told the judge nothing happened. (II, R. B76-79)

Heather's father, Donald Carson, testified that he knew Miguel and wrote a letter on his behalf to his parole officer requesting that Miguel be given early parole. While Miguel and Heather were together, Donald and his wife bought them furniture, a baby bed, clothes, and food. (II, R. B103) A few days after the incident at Michael Ostrowski's home, Miguel called Donald and told him to tell Michael that he was "sorry about what happened" and that he would give him \$100 if he didn't "press charges." (II, R. B105, B107)

The jury found Miguel not guilty of attempt first degree murder, but guilty of aggravated battery and three counts of aggravated kidnaping. (III, R. C65)

Miguel filed a pro-se motion for a new trial alleging ineffective assistance of counsel. According to Miguel, there was an attorney, Rick Duffin, who conducted an investigation on this case prior to trial and stated that he was willing to testify under oath that Heather Carson told him she never saw a knife in the apartment and that she was never kidnaped. Duffin related his availability both on the first day of the trial and again just before the motion for new trial. Miguel's trial attorney, Frank Edwards stated that he did not call Mr. Duffin as a witness because his testimony "would not have mitigated the charges against Mr. Rivera." Both defense counsel and the State's Attorney characterized the prospective evidence as consistent with Heather Carson's alleged

trial testimony that she never saw the knife until they were outside of the apartment building.

Neither defense counsel nor the State's Attorney offered any response to the prospective testimony that Heather told Mr. Duffin that she was never kidnaped. The court denied the defendant's motion.

(III, R. D3-14)

---

The court sentenced Rivera to three concurrent extended terms of 40 years imprisonment for the aggravated kidnaping convictions, and a concurrent term of 5 years for aggravated battery. (III,

R. D30)

ARGUMENT

**BECAUSE THE DEFENDANT'S POST-TRIAL ASSERTIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL, IF TRUE, AT A MINIMUM SUGGEST "POSSIBLE NEGLIGENCE" OF HIS CASE, THE TRIAL COURT'S FAILURE TO FURTHER INVESTIGATE THE ALLEGATIONS AND/OR APPOINT NEW COUNSEL WAS MANIFESTLY ERRONEOUS.**

---

At trial, Miguel Rivera was convicted of aggravated battery and three counts of aggravated kidnapping. Whether Miguel was armed with a knife at the time of the alleged abductions, and whether Heather Carson went to Florida with Miguel "against her will," were critical, contested legal issues that the jury had to resolve before returning a verdict of guilt.

Prior to sentencing, Miguel filed a pro-se motion for a new trial alleging ineffective assistance of counsel. According to Miguel, there was an attorney, Rick Duffin, who conducted an investigation of this case prior to trial and was willing to testify under oath that Heather Carson told him she never saw Miguel with a knife in the apartment and that she was never kidnaped. (III, R. D4-6)

Mr. Duffin related his availability both on the first day of the trial and again just before the motion for new trial. Miguel's trial attorney, Frank Edwards, stated that he did not call Mr. Duffin as a witness because his testimony "would not have mitigated the charges against Mr. Rivera." Both defense counsel and the State's Attorney characterized the prospective evidence as consistent with Heather Carson's alleged trial testimony that she never saw the knife until they were outside of the apartment building. (III, R. D5-7) Neither defense counsel nor the State's Attorney offered any response to the prospective testimony that Heather told Mr. Duffin that she was never kidnaped. The court denied the defendant's motion. (III, R. D3-14)



When a defendant presents a pro se post-trial claim of ineffective assistance of counsel, the trial court must examine the factual basis for his claims to determine whether the allegations, if true, "show possible neglect of the case." *People v. Haynes*, 331 Ill. App. 3d 482, 484, 771 N.E.2d 643 (2002) quoting *People v. Bull*, 185 Ill. 2d 179, 210, 705 N.E.2d 824 (1998).

If the allegations show possible neglect, it is incumbent upon the court to appoint new counsel "to independently evaluate the defendant's claim" and "avoid the conflict of interest that trial counsel would experience if she had to justify her actions contrary to her client's position." *Haynes*, 331 Ill. App. 3d at 484; *Bull*, 185 Ill. 2d at 210 quoting *People v. Johnson*, 159 Ill. 2d 97, 125, 636 N.E.2d 484 (1994). In accord: *People v. Nitz*, 143 Ill. 2d 82, 134, 572 N.E.2d 895 (1991) ("...[I]f the allegations show possible neglect of the case.. new counsel [should] be appointed.") "The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the pro se defendant's allegations of ineffective assistance of counsel." *Johnson*, 159 Ill. 2d at 125.

A trial court's finding that it is unnecessary to appoint new counsel will not be disturbed on appeal unless it is manifestly erroneous. *People v. Woodson*, 220 Ill. App. 3d 865, 581 N.E.2d 320 (1991).

Here, the trial court first failed to adequately investigate the factual allegations. Contrary to the characterizations of both defense counsel and the State's Attorney, Heather Carson testified at trial that while she was in the apartment she saw Miguel pull out a knife, put it to two-year-old Nicholas' throat, and threaten to kill him. (II, R. B54-56, B81) Attorney Rick Duffin allegedly would have testified under oath that Heather said she never saw Miguel with a knife inside the apartment. As a result, Duffin's testimony would have clearly impeached Heather on a critical, contested legal element of the aggravated battery and aggravated kidnapping charges: the presence

of a "deadly" or "dangerous" weapon. (See jury instructions, C.L. 103-104, 99-101)

Furthermore, neither defense counsel nor the State's Attorney addressed defendant's factual allegation that Duffin would have also testified that Heather Carson told him she was never kidnaped. Obviously, such testimony would have impeached Heather on the critical, contested issue of whether or not she was taken to Florida "against her will." (See jury instructions, C.L. 96-97, 100-102) This legal element impacts every count of aggravated kidnapping against Miguel.

The trial court's manifestly erroneous failure to adequately investigate the record facts as they related to the defendant's post-trial assertions of ineffective assistance of counsel also forced defense counsel into a clear conflict of interest at the hearing. In an attempt to defend himself against Miguel's allegations of ineffective assistance of counsel, Mr. Edwards ended up misstating the facts of the case in a manner directly contrary to Miguel Rivera's position and best interests. This is precisely the reason the Illinois Supreme Court has held that new counsel should be appointed to independently investigate the defendant's post-trial claims of ineffective assistance of counsel if there is a possibility of neglect. *Haynes*, 331 Ill. App. 3d at 484; *Bull*, 185 Ill. 2d at 210; *Johnson*, 159 Ill. 2d at 125.

Assuming the truth of Miguel's post-trial allegations, there would have been no strategic reason for counsel's failure to call a neutral witness who would have directly undermined the State's case before the jury on each and every charge against the defendant. As a result, Miguel's claims of ineffective assistance of counsel at a minimum established "possible neglect of [his] case." *Haynes*, 331 Ill. App. 3d at 484; *Bull*, 185 Ill. 2d at 210; *Johnson*, 159 Ill. 2d at 125.

This case is favorably comparable to *Haynes*. There, the Court reversed for further proceedings on defendant's post-trial motion alleging his attorney's ineffectiveness for failure to

call a witness who would have testified that the victim had a gun at the time he was shot and killed by the defendant. Such testimony would have corroborated defendant's claim of self-defense. *Haynes*, 331 Ill. App. 3d at 485.

Based on *Haynes*, as well as the law established by the Illinois Supreme Court in *Bull* and *Johnson*, this Honorable Court should remand this cause for the appointment of new counsel to investigate Miguel's post-trial claims of ineffective assistance of trial counsel. In the alternative, this Court should remand this cause for an "adequate inquiry into the pro se defendant's allegations of ineffective assistance of counsel." *Haynes*, 331 Ill. App. 3d at 484; *Bull*, 185 Ill. 2d at 210; *Johnson*, 159 Ill. 2d at 125.

CONCLUSION

For the foregoing reasons, Miguel Rivera, Defendant-Appellant, respectfully requests that this Court remand this cause for the appointment of new counsel to investigate his post-trial claims of ineffective assistance of trial counsel. In the alternative, defendant respectfully requests that this Court remand this cause for an adequate inquiry into the pro se defendant's allegations of ineffective assistance of counsel.

Respectfully submitted,

**RITA A. FRY**  
Public Defender of Cook County  
69 West Washington Street  
15<sup>th</sup> Floor  
Chicago, Illinois 60602

Counsel for Appellant.

**TODD AVERY SHANKER**  
Assistant Public Defender

Of Counsel.

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APPENDIX TO THE BRIEF

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JURY SELECTION

## I N D E X

P.V. MIGUEL RIVERA  
12-12-01

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WITNESS	DX	CX	RDX	RCX
MICHAEL OSTROWSKI	13	29	38	
HEATHER CARSON	39	66	71	
		75	91	97
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DAMIAN RUBINO	108	113	116	
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File Date: 7-7-2008

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ATTACHMENT # Ex part 4

EXHIBIT

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Sentencing

\*\*\*\*\*



EXHIBIT # ~~2~~ 2

Letter of STATE OF Illinois

on Detes Robter CLEMENS,  
Taking Mr. M-Rivera, into  
CUSTODY Date 5-21-1990

FOR RESIDENTIAL BURGLARY.

Meaning this is why he never  
came in to trial

MITTIMUS:	90C440698
CLASS:	3
COUNT:	1
OFFENSE:	RETAIL THEFT/RETURN>\$150
CUSTODY DATE:	11/10/1990
SENTENCE:	3 YEARS 0 MONTHS 0 DAYS
COUNTY:	COOK
SENTENCE DISCHARGED?:	YES
MITTIMUS:	9015700
CLASS:	1
COUNT:	1
OFFENSE:	RESIDENTIAL BURGLARY
CUSTODY DATE:	05/21/1990
SENTENCE:	4 YEARS 0 MONTHS 0 DAYS
COUNTY:	COOK
SENTENCE DISCHARGED?:	YES
MITTIMUS:	87CR0929701
CLASS:	4
COUNT:	1
OFFENSE:	VIO BAIL BOND/CLASS 3 CONVIC
CUSTODY DATE:	02/11/1988
SENTENCE:	1 YEARS 0 MONTHS 0 DAYS
COUNTY:	COOK
SENTENCE DISCHARGED?:	YES
MITTIMUS:	85C20034601
CLASS:	3
COUNT:	1
OFFENSE:	THEFT >\$300-\$10K
CUSTODY DATE:	01/27/1988
SENTENCE:	2 YEARS 0 MONTHS 0 DAYS

Defes  
R.C.  
X

COUNTY:	COOK
SENTENCE DISCHARGED?:	YES
MITTIMUS:	8217846
CLASS:	2
COUNT:	1
OFFENSE:	ROBBERY
CUSTODY DATE:	08/03/1982
SENTENCE:	4 YEARS 0 MONTHS 0 DAYS
COUNTY:	COOK
SENTENCE DISCHARGED?:	YES
MITTIMUS:	8217846
CLASS:	3
COUNT:	1
OFFENSE:	AGG BATTERY/GREAT BODILY HARM
CUSTODY DATE:	08/03/1982
SENTENCE:	4 YEARS 0 MONTHS 0 DAYS
COUNTY:	COOK
SENTENCE DISCHARGED?:	YES

All complaints regarding the accuracy of information contained in these documents should be submitted, in writing, to the Illinois Department of Corrections, P.O. Box 19277, Springfield, IL 62794-9722.

conduct another search  
return to the IDOC homepage

Illinois Department of Corrections  
1301 Concordia Court  
Springfield, Illinois, 62794  
217-522-2666 | 800-546-0844 TDD

and there was not No warrant for No crime  
of ~~Kidnapping~~ Kidnapping, Just one warrant for  
agg-Battery, from the Chicago police Dept.,  
to the forth ~~myers~~ myers florida Sheriff  
police, that meaning this is a wrongful-  
conviction that was imposed on the defendant,  
and the trial court disposed to do harm in  
to the defendant to make him suffer with a  
malicious conviction. and with a unfair trial  
and Jury;

EXHIBIT # ~~22~~.

ORDER and MOTION for Relief  
and The Supreme  
Court of Illinois



ORDERIN THE APPELLATE COURT, STATE OF ILLINOIS  
FIRST DISTRICTPEOPLE OF THE STATE OF ILLINOIS,  
Plaintiff-Appellee,

V.

NO. 1-02-0699

MIGUEL RIVERA,  
Defendant-Appellant.

## ORDER

This cause coming to be heard on Defendant-Appellant's Pro Se Motion for Relief, which the Court deems a request for extension of time to file a Petition for Rehearing of the Summary Order entered on 3/14/03;

**IT IS ORDERED** that Defendant-Appellant shall have to and including April 30, 2003, in which to file a Petition for Rehearing.

**ORDER ENTERED**

APR 09 2003

Name Miguel Rivera

N-23881

Attorney for

Address Pontiac Correctional Center

P.O. Box 99

Pontiac, IL 61764

Telephone

  
Justice

Justice

Justice

STEVEN M. RAVID, CLERK OF THE APPELLATE COURT, FIRST DISTRICT

Re: Appeal No. 02-0690  
Indictment No. 01-CR-02646

## Petition for Rehearing

People of The State of Illinois

Plaintiff-Appellee,

**FILED**

APPELLATE COURT 1st DIST.

-Vs-

APR 30 2003

STEVEN M. RAVID  
CLERK

Miguel Rivera,

Defendant-Appellant.

Appeal from The Circuit  
Court of Cook County,  
Criminal Division.  
01-CR-2646

Honorable  
Edward Fiala  
Judge Presiding.

Motion To denied The States Brief AND ARGUMENT for  
PLAINTIFF-APPELLEE. AND To Respectfully request AND  
GRANT The defendant Brief, for A-Serious Investigation  
for NUMEROUS of REASONS, AND for Rehearing. and Relif.

Now Comes The defendant-APPELLEE. AND Respectfully  
hope AND PRAY That The Honorable Judge's IN This  
APPELLANT-Court. will Listen To The defendant AND  
GRANT This Motion, AND Investigation.

1. When The defendant was ARessted, BY The forth Myers Sheriff  
DEPT. IN forth Myers florida-Police. for A OUT of State hit  
from The Chicago-Police, only for A- Agg-BATTERY, IN The  
discovery it show IT. The TRIAL COURT AND The defendant  
Attorney AND The state, have This Case All Mis-up,  
Trial Judge, Mr. Fiala, lit All This happen, on AND off The  
Records AND hiding Evidence AND not liting the Jury  
hear from The defendant Witnesses.

The defendant respectfully request that this Honorable Court To denied The states BRIEF. AND GRANT The defendant #1. A New Trial With A New Trial Judge, Because The defendant Miguel, Rivera, HAVE BEEN TRYING To file A COMPLAINT ON The Trial Judge Mr. Fiala, AND The Two states Attorneys. But is NOT RECEIVING A ANSWER BACK ever SINCE I filed A COMPLAINT ON The Trial-Attorney Mr. Frank, D. Edwards,

2, do To CIRCUNSTANCIAL Evidence ON The behalf of The defendant WAS NOT PRESENTED IN TRIAL OR his Witness THAT The JURY HAD A legal Right To Hear Them, AND The Things IN The Police Reports SAY ABOUT The defendant sister Ms. Maria, Rivera, Trial Attorney helped The state BY NOT CALLING her AS The defendant Witness. All This Should HAVE BEEN IN TRIAL For The JURY,

3, The defendant is Begging, The Court For Mercy To GRANT him The NEW TRIAL AND A INVESTIGATION. AND TO be ACQUITTED ON This Wrongfully CONVICTION AND SENTENCING ON Three Counts of KIDNAPPING, THAT The defendant NEVER WAS Arrested For. The defendant BEEN Begging The Appellee Attorneys Mr. Todd, A very, shanker, AND Mr. Robert, Guch, Supervisor, Appeals. For The discovery. No one Will get IT AND do A INVESTIGATION or Give A COPY To The defendant, I'M being Told To CONTACT The Trial Attorney Mr. Frank, Edwards, This Attorney sent ALL MY Letters BACK To Me, The defendant do HAVE Prove,

4, The defendant is Begging for This Honorable Court Help. AND Mercy, I BEEN ASKING The Appellee Attorney Mr. Todd A. shanker, To PUT IN A post-CONVICTION For Me IT HAVE NOT Happen. I HAVE A 4th grade Ed, if I HAVE To go To The Illinois Supreme Court, The Attorneys Tell Me I Well NOT HAVE A ATTORNEY To Give Me Representation?

5. The Trial Judge Mr. fiala, gave The defendant A UNFAIR Trial. This Judge did so ~~many~~ <sup>MANY</sup> Things wrong, IN This Case. AT Trial The ATTORNEY-Mr. FRANK D. Edwards, STATED To Heather, Carson, We're you kidnapp. She STATED No We lived WITHIN, AND The Trial Judge Mr. fiala, said STrike THAT, RIGHT IN front of #12-Jury People, REASON'S for This Honorable APPELLATE Court To GRANT This defendant A INVESTIGATION IN This Cause and for The Jury People To be Talke To, AND D.N.A. Should Have Happen IN This Case. for Heather, Carson, Hair,
1. The Trial Judge Mr. fiala, AND The Two State's-Attorneys was IN The Judge. Chambers With Two of The Jury People Two WEmen. While The defendant-Attorney walk out of The Court Room, one of The WEmen Jury Was A White Register Nurse. AND Other Was A White WEmen, They Took There Self off The Jury Trial. because of What The Trial Judge did While The Attorney for The defendant Was doing his CorSS-EXAMANTion To Heather, Carson,
1. This Trial Judge AND The Two State's Attorneys AND The Defense Counsel AND The defendant WENT IN To A-402 Confrence. The day befor Trial, The Trial Judge Mr. fiala, did so MANY Things off The Records. AND let The STATE Prohibit Evidence into The Trial, like The discovrey. The Police SUMMARRY-REPORTS AND The GENURAL-REPORTS do show THAT Heather, Carson, STATED To The Police Detectives THAT She was NOT kidnapp, AND She Paid RENT With The defendant Miguel, Rivera, REASON'S for A INVESTIGATION for This Honorable Court AND Judge's Should Grant The defendant The INVESTIGATION. because This is The FACT To All of The Evidence THAT The Trial Judge Mr. fiala, AND The Two states Attorneys Are hiding, AND The Trial Attorney for the defendant Mr. FRANK, D. Edwards,

Just Set There And Allowed This To Happen To The defendant While IN The -402 Conference, leading To This Wrongfully Conviction Of Kidnapping,

The defendant Miguel, Rivera, had A Attorney Name.

Ms. Monica, Johnson, from The PUBLIC Defender office THAT Wouldn't do A Proper INVESTIGATION for The defendant, like get tele Phone, Records, OR Come To The Jail To visit The defendant. At A Time of A Continuence while Court Proceedings was going ON. The defendant himself-had To get The Evidence Together, All The ATTORNEYS The Trial Judge gave To The defendant Never did A INVESTIGATION.

The defendant Had This Judge Mr. Fiala, To Take Ms. - Monica, Johnson, off The Case AT The Time of The Court Proceedings. When The defendant Miguel, Rivera, was IN The Process of finding A. Other Attorney I Had Told Judge Mr. Fiala, He States I Better Move fast, The Attorney The defendant Had A Mr. Rick, Duffin, did Come out To visit The defendant AT The Cook COUNTY. AND Read The discovery AND The letters THAT Heather, Carson, wrote To The defendant While A waiting for Trial, Mr. Rick, Duffin, EVEN CONTRIBUTE A INVESTIGATION. Mr. Duffin, talk With Heather, Carson, she stated To This officers of The Court THAT she Never Seen No Weapon, AND THAT she Never felt Kidnapp. The jury Had All legal Rights To Hear The defendant's witness AT Trial,

This Trial Judge Mr. Fiala, was even Inform THAT The defendant was HAVEING Real serious gang Trouble While seTING IN The Cook Count Jail, While AWAITING for Trial The defendant. was IN The Div-II-AH-P.C. I Had MY Commiss gang, and TakeING AWAY. AND Had-urine. T-ON Me. BY The

Throwing ON Me, AND The Trial Judge says AND The Trial Attorney said All we can do is ASK The Jail To Transfer you To another Division. THAT NEVER HAPPEN, The defendant WAS force To SING OUT OF P.C. AND one of The inmates is Here AT The Pontiac Corr. CTR. With The defendant, AND Still Haveing gang Trouble WITH The same gang Bangers, This gang hit is very serious OUT ON The defendant life. The Trial Attorney WAS INform as well The defendant Told Mr. Frank, D. Edwards, if I'M Convicted To Please have Me Transfer To The Ill. River. Corr. CTR. Witness Protection Proagam. The Attorney ~~Never~~ did nothing for My safety, My life, is IN Danger. here I can't even come out My cell,

3, The defendant Miguel, Rivera, Told His Trial Attorney Mr. Frank, D. Edwards, THAT I Wanted The Aressteing Detective Mr. - Robert, Cennedl, IN Trial, because This Detective is The The same Detective THAT Aressted Me for A Burglary IN 1991. AND him AND his Partner Beat Me INTO A Confessio. There WAS so Much going with This Detective There WAS A COMPLAINt file AT The Cook County Jail. They Put Me IN The hospital, AND Now This Detective is The Aress- eting officers ON This Case. AND The Detective Put IN his Reports he states THAT Heather, Carson, Took Police Detectives To The Cemetary. AT Night To TALK Two The Care Taker To look for The weapon, AND A Pair of glove After for Months of liveing with The defendant While IN Florida Heather, Carson, did file for Public-Aid - With The Lee County Florida - Aid offices The Trial Attorney Refuse To get The Records,



4, AND Refuse To Get Records ~~th~~ from The AIRSON Rental Furniture store. Where Heather, Carson, help sing The Application for furniture. for Aer Apt. store - ~~941~~ 941-OR-914-573-9944 IN The Lee County Florida, AND The Trial Attorney Refuse To Get Records from The Cape Caring Center Heather, Carson, sing A Application for Christmas Presents 4645 SE 15th Ave. Cape Coral, FL 33904 - Phone (239) 945-1927 while The defendant Miguel, Rivera, and Heather, Carson, did live Together at 602 SE 13th St. Cape Coral, FL 33990, AND AT sentencing The Trial Attorney Mr. Frank, Edwards, help The state, AND The Trial Judge Mr. Fiala, convicted The defendant BY stating To The Judge. THAT Heather, Carson, did not live with Miguel, Rivera, THAT She lived With A Ms. Bruberry, [Phonetic] in Florida for up to four Months. BUT The defendant do Have legal Prove from The City of Cape Coral, FINANCIAL services Department Customer Service Division. Ms. Bonnie, Nolan, Customer S. Representative Enc. Phone 239-574-7722. Heather, Carson, EVEN sing The lease, To Rent The Apt, Read Reasons To GRANT The defendant A Investigation ON This Wrongfully - conviction,

5, The Judge Mr. Fiala, ordered A. Pre-Trial-Sentencing Investigation - The lady Investigator came out To visit The defendant. befor sentencing she PUT IN her Report THAT The defendant Miguel, Rivera, HAVE his G.E.d. AND THAT The defendant states he WAS wroking for CITY-TRANSFER Co. When The Agg-BATTERY HAPPEN, AND THAT she Stated IN her Reports she NEVER find No Records of The defendant wroking, The defendant HAVE Contact one of his witnesses Mr. Rick, Duffin,

for one. The defendant DON'T, HAVE h G.E.d, The defendant do HAVE Prove, THAT He. HAVE A. 4TH-Grade Education AND THAT He WAS WROKING, This Trial Judge. Mr. FIALA, AND The Two States-Attorneys AND The defendant Trial Attorney AND The lady THAT did The Pre-sentencing INVESTIGATION did seT UP. The defendant ON This WRONGFULLY-CONVICTION OF Three-COUNTS OF KIDNAPPING, People V. HAYNES, 331 Ill. APP. 3d 482, 771 N.E.2d 643 (2002)... 8, 9, 10, People V. Bull, 185 Ill. 2d 179, 705 N.E.2d 824 (1998)... 8, 9, 10, People V. NITZ, 143 Ill. 2d 82, 572 N.E.2d 895 (1991)... 8, People V. Woodson, 220 Ill. APP. 3d 865, ... 8, 581 N.E.2d 320 (1991)... 8

5, The defendant Trial-ATTORNEY Mr. FRANK, D. EDWARDS, WAS NEGLECT IN THIS CASE. AND The lady THAT did The PRE-SENTENCING INVESTIGATION, it do Prove IN The discovery THAT The Aressteding Detectives did go To The defendant Jobs, CITY Transfer Co. AND To TAG-Recovery Re-Pro Co.,

6, The defendant WAS TAKING AVENTAGE of. IN This Trial. The Trial Judge. Mr. FIALA, WAS AWARE of The defendant HAVE IN The Letters wrote BY Heather, Carson, for Months befor Trial, AND When The Letter's ending UP IN The HANDS of Mr. FRANK, D. EDWARDS, The original dis Mising. AT Trial he used A Copy THAT The defendant Had,

7, The defendant. Miguel, Rivera, Ask This Honorable Court AND Judge. for MERCY. AND GRANT The defendant A NEW Trial, AND A INVESTIGATION, IN This Cause ~~to~~ APPEAL No. 1-02-069.

\*  
8, Heather, Carson, Lied ON The Trial STAND, When The Trial ATTORNEY Ask her we're you AND Miguel, Rivera, going To see A Doctor, She stated No ON The STAND, McNeal hospital do have The Records THAT She WAS going To see A Doctor

\*



This Doctor will Testify. To The Truth About Heather, Carson,  
Running To Mr. Ostrowski, AND THEN RUNNING BACK TO Mr. Rivera,

1, The defendant. WAS <sup>set</sup>-UP IN THIS TRIAL BY The State's Attorneys  
2, AND The ~~def~~ defendant Trial Attorney Mr. Frank, Edwards  
being on Two sides of This Case. he will Talk for The  
defendant AT Trial, BUT NEVER Put The defendant Motion's  
AND Evidence in for ~~for~~ Trial. Then The Trial Attorney  
helped The State Attorneys At sentencing To convicted  
The defendant,

3, The Trial Judge. Mr. fiala, AND The Two State's Attorneys  
AND The Trial Attorney for The defendant. They just  
Took The PLACE of being A. Experts of Medical ON The behalf  
of Heather, Carson, when The Jury was out, AND THEN IN.  
The defendant told All The Attorneys THAT The Trial Judge  
gave him. THAT Heather, Carson, AND Miguel, Rivera,  
was seeing A Doctor, THAT he will be willing To testify.  
The Trial Attorney wouldn't Call The Doctor IN. AND  
The Trial Judge Allowed IT To Happen THAT way, The  
Trial was Real UNFAIR.

4, The defendant Told All Attorneys AND The Arresting  
Detectives. THAT The defendant Miguel, Rivera, was fighting  
With Mr. M. Ostrowski, AND Took The Weapon from him,  
I even Told Detectives To Get MY PAGER - Records from  
Berwyn PAGER store, The ~~Fact~~ Truth will Come out.  
They wouldn't do it, it will identified The Home Phone  
number of Mr. Ostrowski, The Night of Aug 27-00 AT 10:30 To  
11:15 PM Called To Mr. Rivera, PAGER.

This Trial Judge Mr. Fiala, said Strike That, in front of The Jury.

15, Heather, Carson, filed for Public-Aid for her AND kids. With The Cape Coral Florida Public-Aid office ~~at~~ The County of Lee County, There Are Records ON This. While she lived With The defendant,

16, While The ~~the~~ defendant Told his Trial Attorney All This he wouldn't do The investigation NOT even. The Public defenders THAT The Trial Judge - sign To The defendant,

17, if This Appellant Court grant the defendant A investigation, the state will be sacred because The truth is going to come out,

18, the defendant is begging, this Honorable Court AND Judge's for Mercy to help save My life. I'AM Telling this Court, I did The Agg-Battery IN The fight With Mr. Ostrowski, I took The knife from him. • it did fall in The Bedroom, I Tried To Tell The Trial Judge Mr. Fiala, in The 402. I Was order NOT To Talk By The Judge. AND Trial Attorney Mr. Edwards, OR I will get more Time Add on. All This Was did To Me off The Records IN The 402,

29, With A New Attorney other Then The Public defenders offices and A investigation I Can Prove To This Honorable Court AND Judge I'AM innocent There isn't No kidnapping IN This case,

2, Heather, AND Michael, said to the Dates that it was  
 A knife Black With A 3" Blade. AND NOW AT Trial  
 The Weapon is #5" to 6" Long, that's Two different  
 Statements The discovery will prove it,

3, Heather, told the ~~jud~~ jury she was not kidnapp.  
 The investigation will prove it.

3, How CAN The State talk for My witness Mr. Duffin,  
 when the jury do Have A legal Right to Hear him  
 testify, My Trial Attorney and the State set-that-up  
 that way, the defendants Counsel did not want  
 the jury to see the water bills because it will prove  
 that City Hall in Cape Coral Florida is not Lieing Trial  
 Attorney help the State in covering up a lot in  
 This case, ~~the~~ and the State is covering up for The  
 Trial Attorney.

3, The Court OR Trial Court and Trial Judge. Never did  
 A investigation. I was taking Advantage of in This case.  
 Trial Attorney said to the defendant that Mr. Duffin,  
 is on stand by. But Counsel tells Court he did not think  
 Mr. Duffin's testimony would have mitigated, that's  
 being Lie to AND, brain washed,  
 AND The Trial Judge Mr. Fiala, AND The Trial Attorney  
 & for The defendant. AND The Two Attorneys Are  
 Pro hibiting when The Court AND Attorneys We're  
 talking About the gang hit out ON My Life, The defendant  
 begge this Court ~~for~~ for Mercy. for A order of Protection  
 I AM IN Serious danger. I AM NOT Safe Here At the

4, I, The defendant Miguel Rivera, do begge This Honorable Judge's, AND Court For Mercy to please understand that I don't know how to say every thing on paper, because of Me having A 4th grade Ed. I do feel THAT I can say it all in court with A Jury.

5, AND There isn't no prove that the Chicago Detective's talk with this Care taker, of the Rosewell, Cemartey, it's not in the police Reports No Names. Police Reports say do to the SNOW, MANTAL, detectiders, did NOT wrok, that CAN NOT be Right it have to be A lie. I have wroked with MANTAL, detectiders, for one Chicago Police Dpt. is All ways do have state of ART MANTAL, detectiders, Chicago Dete's say The F.B.I. was wroking with Them F.B.I. do have MANTAL, detectiders, The Police Dete's went to This same Cemartey, Two Times ONE At Night time and Then in The next day. daytime AND Never got the Care, takers, NAME OR NAMES, The Police detective in This Case is Lieing he and her Never did A investigation to No Cemartey, This detective in My case do got it in for Me Miguel, Rivera, thats why My Trial Attorney Mr. Edwards, helped The state Attorneys by Not calling this Aresseting Detective to Trial,

6, IN My statement I Told The Dete's that I took The knife AWAY from Mr. Ostrouski, when we were fighting Heather, Carson, was standing by The door and The stair At the same time, when fighting stop Mr. Ostrouski, Ran Run out a door Heather, got the kids Ready I help her Then we went out the door,

CONCLUSION-2

The defendant Respectfully Ask OR beggeing this Honorable Court To ~~Reopen~~ open his hearing for A Appeal, The Trial Judge knew That Heather, Carson, and Michael, Ostrowski, was Harrassing My uncle Mr. Leon, Carson, for his S.S.N. To Receive Credit, ~~the~~ This in The Court Proceeding-Records,

I Ask This Court To Have Mercy ON Me please I AM Very sorry I have A 4th-grade Ed. Honorable Judge OR Judge's,

7, There is even Proves of Heather, Carson, transferring her SSI Checks To Florida Social Security Administration by Phone At Are Apt 602 se 13th St. Cape Coral State: FL ZIP: 33990 - The Apt Phone we had 941-242-2579), AND THEN she comes back from Florida Then call S.S.A. and Transfer her S.S.I. Checks To The Address of 6166 N. Sheridan Rd Apt 6K. The same Apt of Mr. Ostrouski, THATS NOT Me kidnapping THATS A set-up, use This Address's 6167 N. Broadway Apt #364. Chicago, IL 60660

8, The Trial Judge. Let the state use A domestic Case Against Me At trial. Heather, Carson, Lie in that Case I beat this case out in trial because there wasn't NO evidence of domestic, Heather, pulled that off To Run Back to Mr. Ostrouski, then Run Back To Mr. Rivera, Apt. in Cicero, IL, There is A Witness My old Attorney Mr. Ron, Sterling, (708-652-2800) this Attorney CAN Tell this Court I have All ways had A Job AND have took good Care of Heather, Kids,

PONTIAC CORR. CTR. I AM BEING FORCED TO BEING OUT OF P.C.  
 I'M BEING TOLD THAT INTERNAL AFFAIRS CAN'T DO NOTHING  
 TO THE GANG HIT HAPPENS, AT THIS POINT AND TIME THE  
 DEFENDANT IS IN CONFINEMENT. THIS IS 3-TIMES THIS HAVE  
 HAPPEN, AND I-A WILL PUT ME RIGHT BACK OUT THERE BY FORCE.

I DEFENDANT TOLD THE COURT THIS GANG TROUBLE WILL HAPPEN  
 I BEGGED MY TRIAL ATTORNEY IN A LETTER IN COURT THEY NOT  
 PROTECTATE MY LIFE. BY HAVING ME SENT TO THE ILL. RIVER  
CORR. CTR. WITNESS PROTECTION PROGRAM, I AM GOING TO END UP  
 DEAD HERE IF I DON'T GET HELP FROM THIS COURT. I TOLD  
 I-A ABOUT THE KNIFE'S THEY STILL WON'T HELP SAVE MY LIFE  
 I BEGGE THIS COURT FOR HELP, THIS GANG HIT IS OUT ON ME  
 ALL OUT IN THE STATE OF ILLINOIS DEPT. OF CORR. I AM ON RECORDS  
 I HAVE BEEN RUN OUT OF A LOT OF THE STATE FACILITIES,  
 I DEFENDANT BEGGE THIS HONORABLE JUDGE'S AND COURT FOR  
 HELP WITH A COURT ORDER TO HAVE ME TRANSFER TO THE  
ILL. RIVER CORR. CTR. WITNESS PROTECTION PROGRAM, PLEASE.  
 AND GRANT THE DEFENDANT A NEW TRIAL AND A INVESTIGATION  
 AND GIVE HELP WITH THE DISCOVERY, I'M BEGGING FOR A NEW TRIAL  
 THAT WILL BE FAIR AND A NEW ATTORNEY OTHER THEN THE PUBLIC  
 DEFENDER OFFICES, YOUR HONORABLE JUDGE. I BEGGE  
 THIS COURT FOR FULFILLS OUR CONSTITUTIONAL OBLIGATION TO  
 PROVIDE LEGAL ASSISTANCE IN INVESTIGATING THIS CASE WITHOUT  
 THE STATE'S INTERFERING, I NEED TO TALK WITH A NEW  
 ATTORNEY AND INVESTIGATORS, INVESTIGATORS PLEASE. YOUR  
 HONORABLE JUDGE, I NEED HELP NO ONE WON'T HELP ME I CAN'T  
 EVEN GET ATTORNEY, TO TAKE MY CASE PRO-BONO. IS THERE A WAY  
 THAT I CAN BE ESCORTED TO COURT YOUR HONORABLE JUDGE,  
 THE APPEAL ATTORNEYS, THE STATE'S ATTORNEYS, AND THE  
 TRIAL ATTORNEY FOR THE DEFENDANT. GOT THIS CASE ALL MIS-UP.  
 AND THE TRIAL JUDGE. LET IT ALL HAPPEN IN A TWO DAYS TRIAL  
 FOR A SET-UP-CONVICTION,



CONCLUSION 2.

I defendant foregoing reasons, Miguel Rivera, Respectfully requests that This Court GRANTS defendant MOTION. I begge, This Honorable Judge's To give A INVESTIGATION This Court Will find out THAT The defendant Miguel Rivera, is INNOCENT ON This Wrongfully Conviction. AND sentencing of 3-Counts of agg-kidnapping, AND THAT This Honorable Court. Will help The defendant get The discovery AND see THAT The statements ~~are~~ ARE diffendant statements from Trial, It is seeble that A lot WAS hiding from The Jury People. I Miguel Rivera, ask This Honorable Court AND Judges fore Mercy AND for A order of Protection IN A Emergency Please Give Relief, ON saving My life. CAN This Honorable Court send INVESTIGATORS To visit Me I don't have No help. NOT even The Public defendaners office WON'T help Me your Honorable Judge, My Pass was use againts Me for a crime. I did NOT COMMIT, ON AND off The Court Records.

for Relif: A New Trial with A investigation, AND A New Attorney ~~of~~ other then The Public defenders offices, OR to be Acquitted for the Wrongful Convection I WAS Never Aressted for kidnapping Please check florida Police Reports AND investigate the Trial Jury People, I ASK

Signed and sworn  
to this 24th day  
of July, 2008  
Mark G. Spencer

Miguel Rivera #N-23881  
"OFFICIAL SEAL"  
MARK G. SPENCER  
Notary Public, State of Illinois  
My Commission Exp. 06/08/2004

No. 02-0699

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the Circuit
	)	Court of Cook County,
Plaintiff-Appellee,	)	
	)	Criminal Division.
	)	01-cr-2646
	)	
-vs-	)	
	)	
MIGUEL RIVERA,	)	Honorable
	)	Edward Fiala
Defendant-Appellant.	)	Judge Presiding.

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MOTION FOR LEAVE TO FILE CERTIFICATE IN LIEU OF RECORD INSTANTER

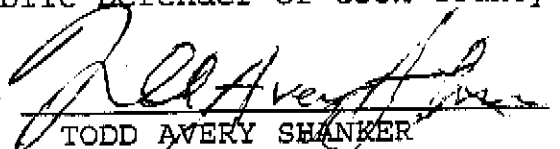
Comes now the defendant-appellant, Miguel Rivera, by RITA A. FRY, Public Defender, through TODD AVERY SHANKER, Assistant Public Defender, and respectfully moves this Court to grant him leave to file the certificate in lieu of the record instanter.

Reasons in support of this motion are set out in the attached affidavit of TODD AVERY SHANKER.

Respectfully submitted,

RITA A. FRY  
Public Defender of Cook County

By

  
TODD AVERY SHANKER  
Assistant Public Defender



STATE OF ILLINOIS     )  
                              ) SS  
COUNTY OF COOK        )

AFFIDAVIT

TODD AVERY SHANKER, being first duly sworn on oath deposes and says:

1. I am an Assistant Public Defender in the Appeals Division.

2. This is an appeal from a jury trial, 01-cr-2646, relating to convictions for aggravated kidnapping and aggravated battery, and an extended-term sentence of 40 years with a concurrent term of 5 years, the Honorable Edward Fiala presiding.

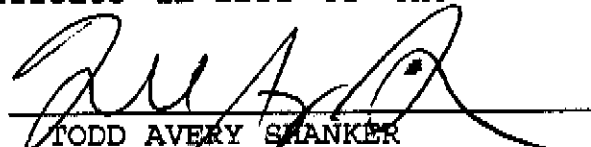
3. Notice of Appeal was filed on 2/14/02.

4. The record was due to be filed on June 21, 2002.

5. I was assigned to this case on July 8, 2002.

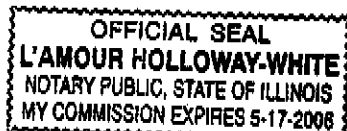
6. This motion is not being made for purposes of delay, but to ensure complete representation of the defendant.

As a result, I respectfully request this Honorable Court to allow me leave to file the certificate in-lieu of the record instant.

  
TODD AVERY SHANKER  
Assistant Public Defender

SUBSCRIBED AND SWORN TO  
Before me this 18th day  
of July, A.D., 2002.

  
NOTARY PUBLIC



No. 02-0699

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the Circuit
	)	Court of Cook County,
Plaintiff-Appellee,	)	
	)	Criminal Division.
	)	01-cr-2646
	)	
-vs-	)	
	)	
MIGUEL RIVERA,	)	Honorable
	)	Edward Fiala
Defendant-Appellant.	)	Judge Presiding.

## NOTICE OF MOTION

TO: Richard Devine	Mr. Miguel Rivera
State's Attorney	No. N-23881
309 Daley Center	711 Kaskaskia Street
Chicago, IL 60602	Menard, IL 62259

PLEASE TAKE NOTICE THAT on July 18, 2002, I shall cause to be filed in the Office of the Clerk of the Appellate Court of Illinois, First District, the Attached Motion and Affidavit.

RITA A. FRY  
Public Defender

By TODD AVERY SHANKER  
Assistant Public Defender

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

Lamont James, being duly sworn on oath, says that he served the above and foregoing Notice and Motion and Affidavit by delivering same to the above-mentioned attorney, and mailing same to defendant on July 18, 2002.

SUBSCRIBED AND SWORN TO  
Before me this 18th day  
of July, A.D., 2002.

Received by:  
Date:

Notary Public



ORDER

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IN THE APPELLATE COURT, STATE OF ILLINOIS  
FIRST DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff-Appellee,	)	
	)	
-vs-	)	No. 02-0699
	)	
MIGUEL RIVERA,	)	
	)	
Defendant-Appellant.	)	

---

O R D E R

Upon motion of counsel for defendant-appellant, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED THAT the defendant-appellant's motion for leave to file the certificate in lieu of the record instant, is hereby GRANTED / DENIED.

RITA A. FRY  
Public Defender

TODD AVERY SHANKER  
Assistant Public Defender

Attorney for Defendant-Appellant

Address: 69 West Washington - 15th Floor

City: Chicago, Illinois 60602

Telephone: (312) 603-0600

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JUSTICE

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JUSTICE

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JUSTICE

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STEVEN M. RAVID, CLERK OF THE APPELLATE COURT,  
FIRST DISTRICT

---

21-060203  
S-031403  
RH denied 05/203

## IN THE APPELLATE COURT OF ILLINOIS

FIRST

JUDICIAL DISTRICT, (DIVISION)

PEOPLE OF THE STATE OF ILLINOIS,  
Plaintiff-Appellee,) APPEAL FROM THE CIRCUIT  
) COURT OF COOK COUNTY,  
) ILLINOIS

vs.

) NO. 01-CR-2646Miguel Rivera  
Defendant-Appellant) HONORABLE JUDGE EDWARD M. FIALA  
) PRESIDINGAFFIDAVIT OF INTENT TO FILE A PETITION FOR LEAVE TO APPEAL  
TO THE ILLINOIS SUPREME COURT

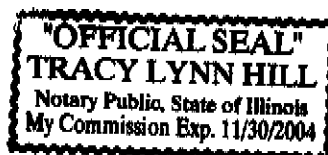
Pursuant to Supreme Court Rule 315(b), MIGUEL RIVERA, pro se, Defendant-Appellant states as follows:

1. That the above captioned cause was decided by this Honorable Court on 1-12-02.
2. That Defendant-Appellant intends, in good faith to file a Petition for Leave to Appeal to the Illinois Supreme Court in the above captioned cause, Pro se.
3. That the undersigned, first being duly sworn in oath, deposes and states that he/she has read the foregoing document, by him/her signed, and that the statements contained herein are true in substance and in fact.

Miguel Rivera #N-23881  
Signature

Subscribed and sworn to before me  
this 23 day of May, 2003

Wang S. Hill  
Notary Public



**THIS IS AN OUTLINE ONLY, NOT A COMPLETE PETITION!!!!!!**

Your petition should contain the following elements:

**I.****PRAYER FOR LEAVE TO APPEAL**

Your Petitioner, (YOUR NAME), pro se, respectfully petitions this Honorable Court for Leave to Appeal pursuant to Supreme Court Rule 315, from the judgment of the Appellate Court of Illinois, (1st - 2nd-3rd-4th-5th) District, which affirmed the judgment of conviction entered by the Circuit Court of (YOUR) County, Illinois, upon the Judge/Jury finding the petitioner guilty of (THE CRIME(S) YOU WERE CONVICTED OF).

**II.****OPINION AND PROCEEDINGS BELOW**

On (DATE YOUR WERE CONVICTED), Petitioner was found guilty of (CRIME YOU WERE CONVICTED OF). Petitioner was subsequently sentenced to a (YEARS SENTENCED) year prison term upon his/her conviction. He/She appealed this conviction to the Illinois Appellate Court, (JUDICIAL DISTRICT). On (DATE CONVICTION WAS AFFIRMED BY THE APPELLATE COURT), the Court delivered its opinion in said appeal, affirming the judgment of conviction and sentence. No petition for hearing was filed (if a petition for rehearing was filed...indicate the date it was filed and date denied) (if a Letter of Intent to File a Petition for Leave to Appeal was filed, indicate that a letter was filed and the date filed).

**III.****POINTS RELIED UPON FOR REVERSAL**

(Here state the reasons the Appellate Court's decision should be reversed).

**IV.****STATEMENT OF FACTS**

(Here truthfully state the facts).

**V.****ARGUMENT**

(Here state your legal argument, including citations to case law and statutes).

**VI.****CONCLUSION**

(Conclude your petition, asking the court for your specific relief. Be sure to sign your petition!)

**THIS IS AN OUTLINE ONLY, NOT A COMPLETE PETITION!!!!!!**

**NOTICE**

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

**FIFTH DIVISION**  
March 14, 2003

**RECEIVED**

'03 MAR 14 P12:15

No. 1-02-0699

**APPEALS DIVISION**  
**COOK COUNTY**  
**PUBLIC DEFENDER**

**IN THE**  
**APPELLATE COURT OF ILLINOIS**  
**FIRST JUDICIAL DISTRICT**

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 01 CR 2646
	)	
MIGUEL RIVERA,	)	Honorable
	)	Edward M. Fiala, Jr.,
Defendant-Appellant.	)	Judge Presiding.

**SUMMARY ORDER**

Following a jury trial, defendant Miguel Rivera was convicted of three counts of aggravated kidnaping and one count of aggravated battery. Defendant was sentenced to concurrent extended-term sentences of 40 years in prison for each count of aggravated kidnaping and to a concurrent sentence of 5 years in prison for aggravated battery. The sole issue raised by defendant on appeal is whether the trial court erred in denying his pro se posttrial motion alleging ineffective assistance of counsel without investigating the allegation and appointing new counsel.

When a pro se defendant raises a posttrial claim of ineffective assistance of counsel, the trial court may, under certain circumstances, appoint new counsel to assist the

1-02-0699

hearing that he spoke to Duffin more than once, and that Duffin would have testified that the victim Carson told him that she did not see a knife until after she left the apartment. According to defense counsel, there was no reason to call Duffin "because negating the presence of the weapon in the apartment would not negate either the stabbing or the kidnaping." Defense counsel further opined that evidence that prior to defendant's arrest the victim Carson freely remained in Florida where defendant was also located would have been cumulative.

The trial court reviewed defendant's pro se motion, the trial record, its notes from trial, and heard from all the parties at the posttrial hearing. Only after this investigation did the trial court deny defendant's motion and conclude that defense counsel provided a "vigorous defense" and that the "[t]rial tactics he chose were those that he felt were appropriate for the type of case he had to defend." We find that the trial court's determination that it was unnecessary to appoint new counsel to assist defendant in presenting his claim was not manifestly erroneous.

Accordingly, the judgment of the trial court is affirmed.

This order is entered in accordance with Supreme Court Rule 23(c)(4). 166 Ill. 2d R. 23(c)(4).

Affirmed.

QUINN, J., with CAMPBELL, P.J., and HARTIGAN, J., concurring.